

MEMORANDUM

State of Alaska Department of Law

TO: Karen Boorman
Executive Director
Alaska Public Offices Commission

DATE: November 4, 1996

FILE NO: 661-97-0255

TEL. NO: 269-5156

SUBJECT: Grandfather Provision in
Campaign Finance
Disclosure Law, Effective
January 1, 1997

FROM: Martin T. Schultz
Assistant Attorney General
Governmental Affairs Section, Anchorage

I. INTRODUCTION

You have requested an opinion clarifying certain provisions of HCS CSSB 191(FIN) am H ("Senate Bill 191"; ch. 48, SLA 1996), the new campaign finance disclosure law that becomes effective on January 1, 1997. Your opinion request primarily concerns the interpretation of a grandfather provision in section 32,¹ and raises two types of questions: (1) after the effective date of the new law, under what circumstances may a former candidate disburse unused campaign assets, raised prior to January 1, 1997; and (2) whether, after the new law takes effect, a former candidate may use campaign contributions to retire debt relating to a campaign held before January 1, 1997.

¹ **Sec. 32. CAMPAIGN ASSET BALANCE HELD ON EFFECTIVE DATE OF THIS SECTION.**

A person who was a candidate as that term is defined by AS 15.13.400, added by sec. 24 of this Act, and who, on the effective date of this section, holds unused campaign contributions obtained while the person was a candidate and before the effective date of this section may, notwithstanding AS 15.13.116, added by sec. 19 of this Act, retain those unused campaign contributions for a future election campaign. The person's use of the campaign contribution balance in a future election campaign makes those unused campaign contributions subject to the provisions of AS 15.13.010—15.13.400 relating to the use of campaign contributions, including AS 15.13.116, added by sec. 19 of this Act, relating to disbursement of campaign assets after election at the conclusion of that future election campaign.

II. BRIEF ANSWERS

1. The new law provides that a former candidate may disburse unused campaign assets held on January 1, 1997, only in connection with a future election campaign. If the former candidate decides not to run in any future election, the new law requires the former candidate to disburse the unused campaign assets within 90 days after he or she decides not to participate in a future election campaign.

2. A former candidate cannot retire campaign debts incurred before January 1, 1997, with either unused campaign assets held on that date or new campaign contributions raised after the new law takes effect.

III. DISCUSSION

Senate Bill 191 substantially revises Alaska's election campaign finance laws for state and local elective office as of January 1, 1997. The revisions are primarily in AS 15.13, and they include a transition provision in section 32 which grandfathers unused campaign asset balances held by a former candidate on January 1, 1997 ("old contributions"). A former candidate for state or local elective office may retain these old contributions to use in a future election. The former candidate with old contributions receives favorable treatment under Senate Bill 191, because without the grandfather provision the unused assets would otherwise become subject to the disbursement restrictions of newly enacted AS 15.13.116 (which allows only limited transfers of funds to an account for a future election campaign).

Senate Bill 191 requires former candidates, who ran for election before January 1, 1997, to make decisions no later than December 31, 1996, regarding disbursement of old contributions and retirement of campaign debts. Our answers to the specific questions you raise in your memorandum follow below.

1. How will section 32 affect former candidates with surplus funds?

A. May an incumbent use the unused campaign funds for any purpose other than for a future election campaign after January 1, 1997 (e.g., use as a legislative office fund)?

No. An incumbent cannot spend the unused campaign funds held on January 1, 1997, for any purpose other than a future election campaign. The grandfather provision allows a person who was a candidate before January 1, 1997, to retain old campaign contributions, notwithstanding AS 15.13.116, “for a future election campaign.” Without section 32, unused campaign contributions would be subject to the more restrictive disbursement provisions under the new law, AS 15.13.116, immediately on its effective date. AS 15.13.116 requires disbursement of campaign contributions within 90 days after an election, with very limited transfers to an account for a future election campaign. Under the old law, the amount of such transfers was unlimited. Similarly, under the old law a candidate could take unused campaign contributions as personal income. The new law prohibits taking campaign contributions as personal income.

Section 32 provides a grandfather exception only if the former candidate intends to conduct a future election campaign. Moreover, under section 32 the entire amount of the old contributions becomes subject to the new law immediately upon a triggering event: the use of any portion of the old contributions in a future election campaign.²

Once the future election campaign ends (after January 1, 1997) the candidate must disburse the old contributions under AS 15.13.116, which allows a legislator to transfer only a limited amount of such unused assets to a legislative office account. AS 15.13.116(a)(9). Thus, to the extent that the future election campaign does not consume all of the old contributions, the remainder of the old contributions becomes subject to the new law’s disbursement restrictions. A candidate could disburse such funds to a legislative office account or for other purposes only to the extent that AS 15.13.116 allows.

In summary, an incumbent cannot disburse unused campaign funds which were raised before January 1, 1997, to an office account or for any purpose other than a future election campaign after that date. Once a candidate uses the old contributions for a future election campaign—or decides to participate in no future election campaign—the restrictions of AS 15.13.116 apply to disbursement of the remainder of the old contributions.

² Section 32 does not require the former candidate with old contributions to use such funds in any particular future election. Thus, the former candidate does not have to use the old contributions in the next election in which he or she participates and can hold such funds indefinitely as long as he or she uses no portion of the old contributions.

B. May former candidates repay themselves with surplus funds after January 1, 1997, for campaign debts incurred prior to that date?

No. Once the new law takes effect, former candidates cannot repay themselves with old campaign contributions received before January 1, 1997, for campaign debts incurred before that date. Section 32 only allows candidates to apply unused campaign assets held on January 1, 1997, to a future election campaign. Debts from campaigns held before January 1, 1997, do not meet that limitation.

Moreover, newly enacted AS 15.13.078(b) strictly defines the circumstances in which a candidate may repay a loan made to the candidate's own campaign. There is no provision under AS 15.13.078 for repaying campaign debts relating to campaigns held before January 1, 1997, because the former candidate would not have filed with the Alaska Public Offices Commission ("APOC") a form indicating an intent to be repaid, as the new law requires. AS 15.13.078(b)(2) (requiring the filing within five days of making the loan).

Accordingly, effective January 1, 1997, candidates may not repay themselves with campaign contributions raised before that date. Candidates wishing to repay themselves for campaign debts incurred before January 1, 1997, must do so no later than December 31, 1996.

C. If a former candidate decides, after January 1, 1997, not to run for elective office again, how may the unused campaign funds be disbursed?

Section 32 is silent on the manner in which a former candidate may disburse old contributions held on January 1, 1997, if the former candidate decides not to run in a future campaign. Presumably, the exemption for unused funds in section 32 would cease to apply, and AS 15.13.116 would require disbursement of those funds. *See* AS 15.13.116(a) (withdrawal as a candidate triggers the disbursement provisions of the statute).

Therefore, the former candidate would have 90 days to disburse the funds after he or she decides not to participate in a future election campaign. Under AS 15.13.116, the former candidate may donate the assets to a charity or make other allowed distributions.

D. May a former candidate use the unused campaign funds in a federal (as opposed to state or municipal) election after January 1, 1997?

Section 32 does not explicitly state whether a candidate may use old contributions in a federal election. Alaska Statute 15.13.010 states that the campaign finance law set forth in AS 15.13 only applies to state and municipal elections. Moreover, under 2 U.S.C. § 453, the provisions of the Federal Election Campaign Act "supersede and preempt any provision of State

law with respect to election to Federal office.” Thus, AS 15.13 does not apply to federal elections.

However, nothing in Senate Bill 191 limits a candidate from using the old contributions for a future federal campaign. Section 32 states that the unused campaign contributions may be retained for “a future election campaign.” Although AS 15.13 does not apply to federal elections, section 32 does not prohibit such funds from being used in a federal campaign. Accordingly, a former candidate may use the unused campaign assets held on January 1, 1997, in a future federal election campaign.³

2. How does the new law affect the fundraising efforts of candidates who incurred debt during an election campaign before the effective date of the new law? (Under current regulation 2 AAC 50.401, candidates have until December 31st of the year after the election to raise funds to repay campaign debt.)

A. May former candidates fundraise after January 1, 1997, to retire old campaign debts?

No. Former candidates cannot fundraise on or after January 1, 1997, to retire campaign debts incurred before that date.⁴ Debts relating to past election campaigns cannot be retired with new campaign contributions raised beginning January 1, 1997, because the new law does not allow contributions for that purpose. The new law restricts the time period in which a contribution can be made to no later than 45 days after an election. AS 15.13.072(c) and AS 15.13.074(c). Thus, fundraising must end 45 days after an election.

Although 2 AAC 50.401 provides that under certain circumstances a candidate may raise campaign contributions until December 31 of the year following the election, to repay campaign debts, a candidate could not show that he or she reasonably relied on the regulation to retire past campaign debt through fundraising activities after December 31, 1996, in light of the new law. *Fairbanks N. Star Bor. v. Lakeview Enter.*, 897 P.2d 47, 54-55 (Alaska 1995) (reliance must be reasonable); *Property Owners v. City of Ketchikan*, 781 P.2d 567, 573 (Alaska 1989) (same).

The regulation, 2 AAC 50.401, will no longer be enforceable on January 1, 1997, because it conflicts with new provisions in AS 15.13.072, AS 15.13.074, and AS 15.13.078. Administrative regulations which are inconsistent with statutes are invalid. *Madison v. Alaska*

³ Using the old contributions in a federal election campaign would make them subject to federal election law. Whether using such old contributions in a federal election campaign would trigger the disbursement provisions of AS 15.13.116 after the election is beyond the scope of your opinion request, and therefore we do not reach that issue.

⁴ Section 32's grandfather provision relates only to unused campaign assets held on January 1, 1997, not campaign debts held on that date.

Dep't of Fish & Game, 696 P.2d 168, 172 n.9 (Alaska 1985); *North Slope Bor. v. Sohio Petroleum Corp.*, 585 P.2d 534, 543-44 (Alaska 1978); *Gudmundson v. State*, 763 P.2d 1360, 1363 (Alaska App. 1988).

Senate Bill 191 was enacted by the legislature and signed by the governor in May 1996. Thus, the persons affected will have had seven full months' notice before Senate Bill 191's effective date to take appropriate action to retire old campaign debt. Persons affected have had reasonable notice of the new law and adequate time to retire old campaign debts before the effective date of the new law. We recommend that you consider sending a letter to each person who may be affected by this change in the law, to provide additional notice.

B. May former candidates repay themselves with money raised after January 1, 1997, for personal loans made to an election campaign before January 1, 1997?

No. Former candidates cannot repay themselves with money raised after Senate Bill 191's effective date for personal loans made to their election campaigns before January 1, 1997. As discussed above, AS 15.13.078(b) does not allow candidates to use money contributed to election campaigns after the effective date of the new law for repayment of loans relating to a past election (i.e., an election held before January 1, 1997).

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Alaska Public Offices Commission
A.G. file no: 661-97-0255

November 4, 1996
Page 7

IV. CONCLUSION

Senate Bill 191 significantly changes campaign finance law for state and local elective office in Alaska as of January 1, 1997. Former candidates with unused campaign assets, or unretired campaign debts, should take appropriate action no later than December 31, 1996, if they prefer to disburse assets and retire debts under the old law.

MTS:akb