

MEMORANDUM

State of Alaska Department of Law

TO: Sandi Stout, Director
Division of Elections

DATE: February 25, 1998

FILE NO: 663-98-0213

TEL. NO: 465-3600

SUBJECT: Application for Petition For
Recall of Yukon Flats
REAA Board Members

FROM: Marjorie L. Vandor
Assistant Attorney General
Governmental Affairs Section - Juneau

You have asked us to review an application for a petition to recall two members of the Yukon Flats Regional Education Attendance Area (REAA) School Board, and to determine if the application is legally sufficient to allow the beginning of the petition process. In short, we conclude that it is not sufficient and must be returned to the submitter because:

- (1) the application does not specify that the voters who signed it are willing to act as sponsors;
- (2) a separate application for each board member sought to be recalled is required;
- (3) the application fails to accurately identify each board member's individual conduct that allegedly constitutes grounds for recall; and
- (4) the allegations are legally insufficient and fail to contain statements of grounds for recall stated with particularity.

Applicable Law

Under AS 14.08.081, the members of an REAA school board are subject to recall in accordance with the provisions of Title 29 relating to recall (AS 29.26.240 -- 29.26.360), except that the director of elections performs the functions of the municipal clerk. Under AS 29.26.270, the municipal clerk must determine whether an application meets the requirements of AS 29.26.260 (a), which are:

- (1) the signatures and residence addresses of at least 10 municipal voters who will sponsor the petition;

- (2) the name and address of the contact person and an alternate to whom all correspondence relating to the petition may be sent; and
- (3) a statement in 200 words or less of the grounds for recall stated with particularity.

Grounds for recall are specified as •misconduct in office, incompetence, or failure to perform prescribed duties. AS 29.26.250.

Legal Analysis of Application

The recall application at issue states the following:

We the undersigned do hereby request the following board members from District REAA #13 be recalled Nancy James - Chairman Seat C, Mae Glazer Vice Chairman Seat E, for the following reasons:

1. Mismanagement of District Funds: (Using Federal Impact Aid monies designated for the 1997 -98 school year to offset the deficit from the 1996-97 school year in the amount of \$206,585.00. Federal Impact Aid under Fund equity should read \$1,704,307.00 instead of \$1,497,722.00. A short fall of \$206,585.00).
2. Not Following Board Policy. (Bylaws of the Board BB 9200(a). A board member should resign from the board before seeking employment. In no event shall a final decision for hire be made prior to receiving the Board Members (sic) resignation. On November 18, 1997 a motion was made to hire another board member who was seeking employment with the district in the amount of \$375.00 per month.

First, we note that the application fails to specify that the •undersigned• are willing to act as sponsors. AS 29.26.260(a)(1). The document signed by the voters must reflect the necessary willingness to act as sponsors. *See* 1996 Inf. Op. Att’y Gen. (663-97-0101; September 25).

Second, neither of the allegations specifically names the board member(s) nor do the allegations mention the personal conduct of the member(s) sought under the recall application. It is not possible to ascertain from the description of events if one, both, or other board members are

responsible for the alleged misconduct, incompetence or failure to perform prescribed duties (i.e., Allegation No. 1. mismanagement of federal impact aid monies; Allegation No. 2. motion made to hire another board member who was seeking employment with the district). Therefore, if the submitter desires to resubmit a revised application, the description of the grounds for recall should describe the actions in a clear and concise manner and reflect the individual board member's alleged conduct that constitutes grounds for recall. *See* 1989 Inf. Op. Att'y Gen. (663-90-0102; September 26). Also, due to the fact that the recall of two board members is sought, separate applications for recall must be submitted for each board member and each application must meet the requirements of AS 29.26.260.¹

Legal Sufficiency of Allegations

Presuming the submitter will correct the technical deficiencies noted above and resubmit applications, we will also address whether the applications would comply with AS 29.26.260(a)(3), quoted above.

¹ Separate applications are required because the form of a recall ballot must contain the following question for each board member sought to be recalled: •Shall [name of person] be recalled from the office of [office]? Yes[] No []• AS 29.26.330(3).

In our opinion, Allegation No. 1, mismanagement of district funds, may be legally insufficient as a ground for recall. Unless there is a federal or state law, REAA rule or district policy prohibiting an REAA board's use of federal impact aid designated for one school year to offset a deficit from a prior school year, such action would not constitute misconduct for purposes of recall of an individual board member. And, unless the law, rule or policy is stated in the allegations, voters will not be able to ascertain if the allegation, even if true, is a matter that is subject to recall. Nor, in our opinion, is the board member able to fairly rebut the allegations. See AS 29.26.330(2). Therefore, in our opinion, Allegation No.1 fails to state *with particularity* the grounds for recall because it does not cite a law, rule or policy that has allegedly been violated. See *Von Stauffenberg v. Committee for an Honest and Ethical School Board*, 903 P.2d 1055, 1059-60 (Alaska 1995) (recall petition that failed to state why entering into executive session was violative of Alaska law lacked sufficient particularity).² Plus, as noted above, the allegation does not state the individual board member's actions that relate to the allegation.

As to Allegation No. 2, it is alleged that a motion was made to hire another board member who was seeking employment with the district in the amount of \$375.00 per month. The allegation does not state who made the motion or if the motion passed. It does not state if the board member seeking employment is one sought under the recall. And, it cannot be determined from the allegation if the decision for hire was a final decision or if it was made prior to receiving the board member's resignation in violation of the bylaws (9200(a)).

In Alaska, the right to recall municipal officials is limited to recall for cause. See *Meiners v. Bering Straits School District*, 687 P.2d 287, 295 (Alaska 1984). In Allegation No. 2, the statement of grounds fails to describe the events with particularity and fails to identify the board members sought in the recall as the members who allegedly acted contrary to bylaws. As stated by the court in *Von Stauffenberg*, [t]he purpose of the requirement of particularity is to give the officeholder a fair opportunity to defend his conduct in a rebuttal limited to 200 words. 903 P.2d at 1060 quoting *Meiners*, 687 P.2d at 302. Here, the allegation is ambiguous and fails to name whose conduct is at issue. Therefore, it is our opinion that Allegation No. 2 is legally insufficient as stating a ground for recall under AS 29.26.250.

We recommend that you send the submitter this opinion and advise that AS 29.26.240 -- 29.26.360 provide no waiting period for submission of a new application for a recall petition. The applicant may redraft the applications and proposed petitions, obtain the signatures of at least 10 eligible voters willing to act as sponsors, with separate applications prepared and submitted for each board member sought to be recalled, and submit a new application for a petition.

² A petition that alleges violation of totally non-existent laws is legally insufficient. *Id.* at 1060 n.13.

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If further assistance is needed, please do not hesitate to call us.

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