IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

TREG R. TAYLOR, in his official capacity as ATTORNEY GENERAL of the STATE OF ALASKA)
)
Plaintiff,)
)
v.)
)
ALASKA LEGISLATIVE AFFAIRS AGENCY,) Case No. 3AN-21-________ CI
)
Defendant.)
)

MOTION FOR SUMMARY JUDGMENT

I. Introduction

The Attorney General of the State of Alaska seeks declaratory judgment to resolve a dispute over the date upon which the 2022 operating budget recently passed by the Alaska Legislature would authorize the expenditure of funds from the state treasury. Article II, section 18 of the Alaska Constitution provides that "[l]aws passed by the legislature become effective ninety days after enactment" unless the legislature "by concurrence of two-thirds of the members of each house, provide for another effective date." The Attorney General's position is that this provision is mandatory and thus, because the legislature did not provide for another effective date, the operating budget bill passed by the legislature is not effective until 90 days after enactment. The Legislative Affairs Agency (LAA) has indicated that the effective date clause does not control and that spending set out in the operating budget can begin on July 1 despite the

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law not being effective on that date.

The end of the 2021 fiscal year is fast approaching and there will be no operating budget in effect to support state government when the new fiscal year begins on July 1, 2021, so the Attorney General has filed a complaint for declaratory relief to establish whether the operating budget passed by the legislature authorizes state spending before its constitutional effective date. Because a judicial determination is urgently needed and the complaint raises pure issues of law, the Attorney General now moves for summary judgment on an expedited basis.

II. Facts

The Alaska Legislature did not pass an FY 2022 operating budget by the end of the regular legislative session.[1] Instead, the two houses of the legislature passed differing versions of an operating budget (HB 69) and did not agree on a final version before the regular session ended on May 19, 2021.[2] To resolve the differences between the two versions of the budget bill, the two houses appointed members to a conference committee.[3] And Governor Dunleavy exercised his constitutional authority to call the

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1 Alaska Const. art. II, sec. 8.

2 Senate Journal, May 19, 2021, https://www.akleg.gov/basis/Journal/Pages/32?Chamber=S&Bill=HB%20%2069&Page=01202#1202

3 House Journal, May 19, 2021, https://www.akleg.gov/basis/Journal/Pages/32?Chamber=H&Bill=HB%20%2069&Page=01228#1228;

Senate Journal, May 19, 2021, https://www.akleg.gov/basis/Journal/Pages/32?Chamber=S&Bill=HB%20%2069&Page=01202#1202

legislature into a special session[4] to adopt HB 69 or a similar appropriations bill for the operating and other expenses of state government as well as to address other fiscal issues.[5]

The conference committee met during the special session and eventually produced a conference committee substitute for HB 69 (CCS HB 69) to be considered by the full legislature. CCS HB 69 was passed by the House on June 15, 2021 and the Senate on June 16, 2021. Although the Senate approved an immediate effective date for CCS HB 69 by the required two-thirds super majority,[6] the House did not as that motion failed on a vote of 23-16 (with one member excused).[7] CCS HB 69 has not yet been transmitted to the governor.

A dispute has arisen within state government as to whether CCS HB 69 authorizes the expenditure of state funds as of July 1.CCS HB 69 includes a retroactivity provision for certain appropriations,[8] but the Alaska Constitution provides that absent another effective date concurred in by two-thirds of the members of each house of the legislature,

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4 Alaska Const. art. II, sec. 9; Art. III, sec. 17.

5 Executive Proclamation by Governor Mike Dunleavy dated May13, 2021; available at http://w3.legis.state.ak.us/docs/pdf/proclamations/32-Special-Session-1-and-2-Proclamations.pdf

6 Senate Journal, June 16, 2021, https://www.akleg.gov/basis/Journal/Pages/32?Chamber=S&Bill=HB%20%2069&Page=01289#1289

7 House Journal, June 15, 2021, https://www.akleg.gov/basis/Journal/Pages/32?Chamber=H&Bill=HB%20%2069&Page=01317#1317

8 CCS HB 69, sec. 79.

"[l]aws passed by the legislature become effective ninety days after enactment."[9]

The Legislative Affairs Agency has taken the position that CCS HB 69 permits the state to spend money authorized by the FY 2022 budget, starting on July 1, 2021, even though the law will not become effective until sometime in September. The Attorney General has advised the governor that the executive branch is not authorized by CCS HB 69 to spend state money until the law becomes effective.[10] As a result, the State is facing the prospect of a shutdown of state government on July 1, 2021.

III. Applicable legal standards

The "analysis of a constitutional provision begins with, and remains grounded in, the words of the provision itself. [The court is] not vested with the authority to add missing terms or hypothesize differently worded provisions ... to reach a particular result."[11] Instead, courts should "look to the plain meaning and purpose of the provision

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9 Alaska Const. art. II, sec. 18.

10 However, legal precedent from other states and the tripartite constitutional structure of Alaska's government suggests that the governor has inherent authority to maintain some level of government operations even without valid spending authority. Courts have regularly held, for example, that the judicial branch of government has the inherent authority to fund its own operations as necessary to fulfill its basic constitutional duties. *See e.g.*, *Matter of Alamance County Court Facilities*, 405 S.E.2d 125, 132-34 (N.C. 1991); *State ex rel. Metropolitan Pub. Defender Servs., Inc. v. Courtney*, 64 P.3d 1138, 1139 (Or. 2003); *In re Clerk of Court's Compensation for Lyon County v. Lyon County Comm'rs*, 241 N.W.2d 781, 784-86 (Minn. 1976) (citing Carrigan, *Inherent Powers of the Courts* (published by National College of the Judiciary)); Gary D. Spivey, Annotation, *Inherent Power of Court to Compel Appropriation or Expenditure of Funds for Judicial Purposes*, 59 A.L.R.3d 569, and cases cited.

11 *Wielechowski v. State*, 403 P.3d 1141, 1146 (Alaska 2017) (quoting *Hickel v. Cowper*, 874 P.2d 922, 927-28 (Alaska 1994)).

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and the intent of the framers,"[12] and adopt "the rule of law that is most persuasive in light of precedent, reason, and policy."[13]

Because the impact of CCS HB 69's effective date and retroactivity provisions are purely legal questions, the Court can properly decide this case on summary judgment. "Summary judgment is proper if there is no genuine factual dispute and the moving party is entitled to judgment as a matter of law."[14]

IV. Argument

A. The plain language of the Alaska Constitution dictates that CCS HB 69 will not be effective until 90 days after enactment.

The Alaska Constitution expressly provides that state funds may not be spent without an appropriation by the legislature:

> No money shall be withdrawn from the treasury **except in accordance with appropriations made by law**. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.[15]

The Alaska Constitution also establishes a default effective date for legislation and requires a supermajority vote to change this default rule. Article II, section 18 declares:

> Laws passed by the legislature become effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date. [16]

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12 *Hickel v. Cowper*, 874 P.2d 922, 926 (Alaska 1994).

13 *Treacy v. Municipality of Anchorage*, 91 P.3d 252, 260 (Alaska 2004).

14 *Devine v. Great Divide Ins. Co.*, 350 P.3d 782, 785-86 (Alaska 2015).

15 Alaska Const. art. IX, sec. 13 (emphasis added).

16 Alaska Const. art. II, sec. 18.

Resolution of this dispute begins and ends with the words of article II, section 18.[17] Here, there is no question that CCS HB 69 is a "law" making appropriations and there is also no dispute that the legislature did not by concurrence of two-thirds of the membership of each house provide for a special effective date. Thus, under a plain application of the Alaska Constitution, it is clear that the appropriations set forth in CCS HB 69 are only authorized to be expended when that bill becomes law, which is ninety days after enactment.

The defendant does not appear to dispute this.[18] Nevertheless, in an email to legislative employees, the LAA director expressed the view "that a functional budget was passed which allows authorized legislative personnel to continue employment on July 1."[19] Citing "past practice and Legal Services interpretation," the email asserts that CCS HB 69's "retroactivity clause enables the work of the Legislature to continue, despite the House not passing the effective date clause." This is incorrect.

B. The retroactivity provision does not change the effective date, nor can it authorize spending in advance of the effective date.

CCS HB 69 contains a retroactivity provision that makes most sections of the

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[17] *See Wielechowski v. State*, 403 P.3d 1141, 1146 (Alaska 2017) ("[The] analysis of a constitutional provision begins with, and remains grounded in, the words of the provision itself.").

[18] *See* Exhibit 1, Megan Wallace to Rep. Louise Stutes re: Retroactive effective dates, June 16, 2021 at 1-2. ("A retroactive clause does not amount to a special effective date.")

[19] *See* Exhibit 2, Jessica Geary email to legislators and legislative staff, June 18, 2021.

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budget retroactive to June 30 or July 1, 2021.[20] But this provision does not change the bill's effective date nor can a retroactivity clause be used to circumvent article II, section 18's default effective date provision. As the Alaska Supreme Court has explained, "[a] law's retroactive date and its effective date are distinctly different concepts...While a retroactive law applies to pre-enactment conduct, the legal effect produced by the law occurs only after the law's effective date."[21] In other words, CCS HB 69's retroactivity clause only has legal effect after the law becomes effective, and thus it cannot authorize any spending in advance of the effective date.

To see why this is so, imagine a law that imposes a new tax on sales of real property that is signed into law on August 1, becomes effective 90 days later on October 30, and that contains a provision making the law retroactive to January 1. Surely, no one could seriously argue that the taxing authority could begin to collect this sales tax immediately upon signature on the basis of the retroactivity clause? Such an approach would permit the legislature to use a retroactivity provision as an end-run around the constitutional requirement of a two-thirds majority to change the constitutionally-mandated default effective date and the constitutional requirement that requires an effective appropriation before the expenditure of state funds.

The 90-day delay imposed by article II, section 18 serves an important constitutional purpose. As the Alaska Supreme Court has explained, "the framers

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20 CCS HB 69(brf sup maj fld H/S)(efd fld H) §79(c)-(d).

21 *Arco Alaska, Inc. v. State*, 824 P.2d 708, 711 (Alaska 1992).

envisaged that article II, section 18 would afford those affected an opportunity to react to the new legislation by challenging it either through the referendum process or through the courts...."[22] No precedent supports the claim that this important purpose can be easily circumvented by means of a retroactivity provision.

Just as the hypothetical tax law's retroactivity provision would not authorize the collection of taxes before the law became effective, CCS HB 69's retroactivity provision does not authorize spending before the law itself is effective. This is doubtless why supplemental appropriations bills typically have immediate effective dates.[23] And, in fact, the defendant's Legislative Drafting Manual recommends that any bill or section of a bill that is intended to have retroactive effect should have an immediate effective date.[24]

C. The interim borrowing clause does not offer a constitutional alternative to a government shutdown.

The defendant's legal division has also proposed that the governor could manage any "cash flow issues while ... wait[ing] for the bill to take effect" either by shifting money between accounts or by using interim borrowing authorized by article IX, section

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22 *Id.* at 710. Although the referendum process may not be used to repeal appropriations, *see* Alaska Const. art. XI, sec. 7, appropriations can be challenged in court; and if the framers of Alaska's Constitution had not intended the 90-day default effective date to apply to appropriations bill, they could have provided a different rule for appropriations bills, just as they did with the governor's veto power. *See* Alaska Const. art. II, sec.16.

23 *See e.g.* Ch. 1, SLA 19; Ch. 1, TSSLA 15; Ch. 10, SLA 07.

24 Legislative Affairs Agency, *Manual of Legislative Drafting* 34 (2021) ("It is good drafting practice to provide an immediate effective date for the retroactivity section and the bill sections that are to be retroactive, although an immediate effective date is not constitutionally required."), available at http://akleg.gov/docs/pdf/Manual-of-Legislative-Drafting-2021.pdf

10 "to keep some or all governmental services operational during a 90-day period before the bill takes effect."[25] But these suggestions misconceive the problem created by the failure to make the budget bill effective on July 1—the problem is not a lack of funds to cover valid appropriations on July 1, but the lack of valid appropriations to be covered.

The constitution's interim borrowing clause permits the government to borrow funds to manage a temporary revenue shortfall; it does not authorize spending at all.

Article IX, section 10 provides:

> Interim Borrowing. The State and its political subdivisions may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year, but all debt so contracted shall be paid before the end of the next fiscal year.

By its plain terms, this section addresses the reality that the State's revenue is collected throughout a fiscal year and cash inflows may not occur before payments authorized by an appropriations bill need to be made. In other words, this constitutional provision permits short-term borrowing to deal with a situation in which the State lacks the cash to fund valid appropriations because the necessary revenues have not been collected. But the existence of valid appropriations—i.e. appropriations which are effective as a matter of law—are a predicate for the borrowing section 10 authorizes. The power to borrow is distinct from the power to spend and cannot simply substitute for valid appropriations. As a result, the interim borrowing authorized by article IX, section 10, does not offer any solution to the problem created by the lack of a July 1 effective date for the operating budget.

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[25] Exhibit 1 at 3.

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D. Decades-old Attorney General Opinions addressing different situations do not support the claim that the governor is free to ignore the constitutional requirements of article II, section 18.

The defendant's legal division and some legislators' public statements have also pointed to Attorney General Opinions from decades ago, arguing that "[t]he attorney general has opined on several different occasions in several different contexts that funds may be obligated and expended prior to the actual effective date of an appropriation."[26] Setting aside the fact that Attorney General Opinions are not controlling,[27] the opinions do little to establish that the governor is free to expend any and all funds appropriated in CCS HB 69 before the law becomes effective.

Two of the opinions cited primarily address supplemental appropriations bills and argue that a supplemental appropriation's effective date relates back to the effective date of the appropriation it supplements, thereby resolving any apparent problem caused by the lack of an effective date.[28] CCS HB 69 is a new operating budget bill and does not relate back to an earlier budget for FY 2022. And to the extent that these bills included appropriations that did not supplement earlier appropriations, the opinions are much more "cautious"[29] in their endorsement of the executive branch's authority to spend funds, characterizing the power "to spend before an appropriation takes effect" as

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[26] Exhibit 1 at fn. 9.

[27] *See e.g.*, *Bullock v. State, Dept. of Community and Regional Affairs*, 19 P.3d 1209, 1216 (Alaska 2001).

[28] *See* 1989 Inf. Op. Att'y Gen. (May 25, 1989) attached as Exhibit 3; 1990 Alaska Op. Att'y Gen. No. 221 (May 18, 1990) attached as Exhibit 4.

[29] Exhibit 4 at 1.

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"extraordinary,"[30] and relying specifically on the "rule of necessity"[31] and the constitution's mandate that the State "provide for the public health, safety, and welfare."[32]

The third opinion does not appear to involve a budget that lacked an immediate effective date, but rather one that awaited the governor's signature. And in this scenario too, the Attorney General relied on the "rule of necessity" to justify any spending, counseling that "you may and must expend or incur *the minimum amount* required to carry out the duties and functions prescribed to your department by law."[33]

Thus, contrary to the defendant's characterization, these Attorney General's Opinions endorse only limited spending consistent with the executive branch's constitutional obligations, "caution[ing]…that obligation and expenditure in advance of the technical effective date must be undertaken lightly, and when undertaken, may be only on grounds of necessity. That is, a finding, preferably in writing, should be made to show that the obligation or expenditure is necessary to protect the public interest."[34] This is far from the license to treat the effective date as irrelevant that the LAA thinks it is. Instead, these old Attorney General opinions are consistent with the view that before the

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[30] Exhibit 3 at 4.

[31] *Id.*; *see also* 1981 Inf. Op. Att'y Gen. (July 10, J-66-866-81), attached as Exhibit 5, at 2; and Exhibit 4 at 1, 3 (recommending spending non-supplemental appropriations only after making written findings of necessity).

[32] Exhibit 5 at 2.

[33] *Id.*

[34] Exhibit 4 at 3.

effective date of the operating budget, the State may spend only the minimum amount necessary to fulfill the essential constitutional functions of government, while shutting down all non-essential services and departments.

V. CONCLUSION

Because CCS HB 69 will not become effective until 90 dates after the governor signs the bill, the Attorney General respectfully asks the Court to grant his motion for summary judgment and issue a declaratory judgment confirming that no expenditure of state funds is authorized by the budget law until its effective date; and the government may expend state funds only to the minimum extent required to comply with the State's constitutional obligations and federal law.

DATED: June 21, 2021.

TREG R. TAYLOR
ATTORNEY GENERAL

By:

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Alaska Bar No. 0411074
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MEMORANDUM June 16, 2021

SUBJECT: Retroactive effective dates (Work Order No. 32-LS1041)

TO: Representative Louise Stutes
Speaker of the House
Attn: Matt Gruening

FROM: Megan A. Wallace
Director

You asked what happens if the effective dates in CCS HB 69, the operating budget, fail.

Special effective dates require a two-thirds vote. If the special effective dates fail, the bill will take effect 90 days after enactment.[1] [2]

Retroactivity and Effective Dates.

If the special effective dates do not receive the required two-thirds vote, the bill will take effect 90 days after it is signed by the governor, in accordance with AS 01.10.070.[3] However, the bill contains a retroactivity provision, which makes *all* of the provisions retroactive to their corresponding intended effective dates.[4] A retroactive clause does not

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[1] *See* art. II, sec. 18, Constitution of the State of Alaska.

> SECTION 18. Effective Date. Laws passed by the legislature become effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date.

[2] Enactment occurs when the governor signs the bills or allows the bill to become law without signature. *See* AS 01.10.070, and art. II, sec. 17, Constitution of the State of Alaska.

[3] The difference in the effective dates does not trigger a requirement that the other house concur before the bill takes effect. *Alaska Legislative Council v. Hammond*, Case No. 4 FA-80-1989 (March 1981).

[4] The supplemental sections of the bill are retroactive to April 15, 2021.

amount to a special effective date. Accordingly, the retroactivity provision may be adopted by majority vote rather than the two-thirds vote required for effective dates.[5]

Because the bill contains a retroactivity provision for all appropriations in the bill, the executive branch may choose to give effect to the retroactivity clause, and allow state government to continue operating before the bill takes effect 90 days later, knowing that the appropriations are retroactive to their intended effective dates. The Alaska State Legislature has historically used retroactivity provisions in appropriation bills, and those retroactivity clauses have been given effect by the administration. Nevertheless, please note that the administration may choose not to give effect to the retroactivity clause. There also might be unintended consequences of failing to adopt the special effective dates that are not immediately foreseeable.

If there are cash flow issues while the administration waits for the bill to take effect, there may be some accounting tools available to temporarily shift money from one account to a depleted account on a short-term basis. In addition, there previously has been a practice by the executive branch to use money from the constitutional budget reserve fund (CBR) (art. IX, sec. 17, Constitution of the State of Alaska) to meet cash flow shortages and to repay the money used at a later date.

In addition, the constitution specifically contemplates interim borrowing, and the administration could utilize that provision to continue operations during the 90-day period before the bill takes effect.[6] Borrowing in anticipation of revenue is dealt with statutorily under AS 43.08.010 - 43.08.060. Under these provisions, the commissioner of revenue is authorized to borrow money to meet appropriations for a year in anticipation of the collection of revenues for that same year. The commissioner has the discretion to decide the amount and terms of the notes, but "a note may not be sold at less than par and accrued interest."[7] Under AS 43.08.035, an appropriation from the general fund is provided for to pay for notes "when the term of those notes measured from the date of issuance to the date of first maturity does not exceed nine months."

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[5] *ARCO Alaska, Inc. v. State*, 824 P.2d 708 (Alaska 1992). *See also* 1989 1 Op. (Inf.) Att'y Gen. 367 (June 1, 1989).

[6] *See* art. IX, sec. 10, Constitution of the State of Alaska:

> SECTION 10. Interim Borrowing. The State and its political subdivisions may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year, but all debt so contracted shall be paid before the end of the next fiscal year.

[7] AS 43.08.040.

Accordingly, it is possible that the executive branch may choose to contract for short-term debt to keep some or all governmental services operational during a 90-day period before the bill takes effect.

Constitutional Sweep

The constitutional sweep in art. IX, sec. 17(d), Constitution of the State of Alaska, provides:

> (d) If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law.

The constitutional sweep will occur on June 30, 2021, if the legislature fails to adopt the "reverse sweep" language, which requires approval upon an affirmative vote of three-fourths of the members of each house of the legislature.[8] This is irrespective of passage of the special effective dates. If the legislature does adopt the "reverse sweep" language but fails to adopt the special effective date for that provision, the "reverse sweep" language is intended to apply retroactively to July 1, 2021. Please be advised, however, that this may not be sufficient to avoid the constitutional sweep that must occur on June 30, 2021. Nevertheless, there is a chance that a court would uphold the retroactivity clause to allow the "reverse sweep" language to operate, even after July 1, 2021.

Expenditure Before Effective Date

The attorney general has opined on several different occasions in several different contexts that funds may be obligated and expended prior to the actual effective date of an appropriation.[9] In 1989, the attorney general advised that

> A strict interpretation of the absence of an effective date would imply that no money may be expended under the appropriations made in this bill until 90 days after you sign the bill. However, it would be irresponsible to disrupt state government functions to await the constitutionally specified effective date.[10]

In 1990, in concurrence with the earlier opinion, the attorney general stated:

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[8] *See* art. IX, sec. 17(d), Constitution of the State of Alaska.

[9] *See, e.g.*, 1990 Att'y Gen Op. No. 221 (May 18, 1990); 1989 Inf. Op. Att'y Gen. (May 25, 883-89-0076); 1981 Inf. Op. Att'y Gen. (July 10, J-66-866-81), citing the rule of necessity and AS 37.05.170.

[10] 1989 Inf. Op. Att'y Gen. (May 25, 883-89-0076), attached hereto.

> To summarize our analysis of the effective date issue, there is strong precedent for remedying the absence of an effective date for the supplemental appropriations contained in the bill. They can be given retrospective application to the beginning of the current fiscal year. Care should be taken to assure that the governor's power of veto is not compromised. For other appropriations in the bill, there is authority in the form of an earlier opinion of this office that these appropriations can be obligated at least from the beginning of the fiscal year for which they are made. However, as an additional measure to assure the validity of an expenditure, any advance obligation incurred under those appropriations must be justified as necessary to protect the public interest.[11]

If I can be of further assistance, please advise.

MAW:lme
21-322.lme

Attachment

[11] 1990 Att'y Gen Op. No. 221 (May 18, 1990) at 9.

Sheehan, Kate E (DOA)

From:	Jessica Geary <Jessica.Geary@akleg.gov>
Sent:	Friday, June 18, 2021 5:14 PM
To:	Sheehan, Kate E (DOA)
Subject:	FW: FY22 Budget Status
Follow Up Flag:	Follow up
Flag Status:	Flagged

FYI

Jessica Geary
Executive Director
Legislative Affairs Agency
Phone 907-465-6622
Cell 907-723-2994

From: Jessica Geary
Sent: Friday, June 18, 2021 5:13 PM
To: allusers@akleg.gov
Subject: FY22 Budget Status

Dear Legislators and Legislative Staff,

By now, many of you have heard that Executive Branch employees received layoff notices yesterday. It will likely be the Legislature's position that a functional budget was passed which allows authorized legislative personnel to continue employment on July 1. Based on past practice and Legal Services interpretation, the retroactivity clause enables the work of the Legislature to continue, despite the House not passing the effective date clause. Therefore, at this time, assuming the governor will sign the budget, the Legislative Affairs Agency will not be issuing layoff notices on behalf of the Legislative Branch.

If the bill is not signed by July 1, the governor vetoes the budget, or there are other delays related to the availability of the new fiscal year's funds, we will update you as soon as possible. It is my sincere hope that these disagreements will be worked out prior to July 1; however, if not, we will be forced to implement a contingency plan that places nonessential staff on furlough status.

Please reach out to either me, Skiff Lobaugh or your appointing authority if you have any questions or concerns.

Best,

Jessica

Jessica Geary
Executive Director
Legislative Affairs Agency

Phone 907-465-6622
Cell 907-723-2994

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

P.O. BOX K—STATE CAPITOL
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OFFICE OF THE ATTORNEY GENERAL

May 25, 1989

Honorable Steve Cowper
Governor
State of Alaska
P.O. Box A
Juneau, AK 99811

Re: CSHB 154 (2d Fin)(efd fld) -- making supplemental appropriations
Our file: 883-89-0076

Dear Governor Cowper:

As requested by your legislative staff assistant, Shari Kochman, we have reviewed CSHB 154(2d Fin)(efd fld), making miscellaneous supplemental appropriations for various purposes, including the Exxon Valdez oil spill. The primary legal issue raised by the passage of this bill involves the absence of an immediate effective date. You originally introduced this bill to supplement fiscal year (FY) 1989 appropriations to various agencies. The version of the bill you introduced contained an immediate effective date. However, the House of Representatives failed to adopt the immediate effective date by the two-thirds majority vote required by art. II, sec. 18 of the Alaska Constitution. 1989 House Jour. 1661 (May 6, 1989).

For a bill enacting measures other than appropriations, the failure to adopt an express effective date results in the application of the 90-day effective date set out in art. II, sec. 18, of the Alaska Constitution. However, the method of determining the effective date for an appropriation bill rests on other considerations. "An appropriation bill is not 'legislation' in the strict sense." Carr v. Frohmiller, 56 P.2d 644, 670 (Ariz. 1936). These bills provide authority to spend money to pay for something that is authorized by general law. An appropriation is more like an administrative message passed between branches of government and is distinct from other general law. This is evident because general law cannot be amended in an appropriation bill. Alaska Const., art. II, sec. 13. Nor may the people enact appropriations directly through the initiative process. Alaska Const., art. XI, sec. 7. A strict interpretation of the absence of an effective date would imply that no money may be expended under the appropriations made in this bill until 90 days after you sign the bill. However, it would be irresponsible to disrupt state government functions to await the constitutionally specified effective date.

The bill contains appropriations necessary to supplement existing appropriations made to finance public assistance and aid to the elderly necessary to feed and clothe recipients of these benefits. Additionally, the bill contains appropriations necessary to compensate individuals who are presently suffering from the unforeseen effects of the Exxon Valdez oil spill in Prince William Sound. Obligations to cover these and other purposes covered by FY 1989 appropriations supplemented by this bill must be continuously incurred and honored to finance state activities that were originally set in motion by enactment of general appropriation Acts for FY 1989.

The majority of the appropriations contained in the bill are stated to be "supplemental" appropriations. These appropriations add to existing FY 1989 appropriations made to implement the executive budget for the year. The Alaska Constitution requires the governor to prepare the state budget to cover a fiscal year and implies that the general appropriation bill to finance state government operations must also cover the fiscal year. Alaska Const. art. IX, sec. 12. The FY 1989 executive budget is financed by appropriations in effect since July 1, 1988 and remains operative until June 30 of this year unless reappropriated administratively or by the legislature. We believe that it is reasonable to construe the operative effect of a supplemental appropriation to relate back to the effective date of the original appropriation once it is enacted.

Under federal precedent, a supplemental appropriation is subject to the same effective date and conditions attached to the original appropriation. The effect of a supplemental appropriation has been explained in the following manner: "A supplemental appropriation supplements the original appropriation, partakes of its nature, and is subject to the same limitations as to the expenses for which it can be used as attach by law to the original appropriation." 4 Comp. Dec. 601 (1897). <u>See also</u> 27 Comp. Gen. 96 (1947); 25 Comp. Gen. 601 (1946); 20 Comp. Gen. 769 (1941). In our opinion, the absence of an effective date does not change the operative effect of true supplemental appropriations contained in the bill. These appropriations carry the effective date of the appropriations that they are intended to supplement. By their nature, supplemental appropriations merge with the original appropriation and, upon enactment, relate back to the first of the fiscal year.

Some of the appropriations made in this bill are probably not intended to supplement existing FY 1989 appropriations. It is difficult to determine whether the legislature intended certain appropriations to be supplementary. If it is possible to

point to an existing FY 1989 appropriation for the same or similar purpose, it would be reasonable to consider the appropriation supplementary and thereby operative retrospectively to the beginning of the fiscal year. Other appropriations that are clearly not supplemental in nature should be implemented with caution before the constitutional effective date arrives. These appropriations take effect prospectively only and probably would be determined to relate back to obligations incurred after the beginning of FY 1990.

In an earlier opinion issued by this office, we concluded that the Department of Administration (DOA) has broad powers to allocate authority to expend an appropriation even before it is enacted. 1981 Inf. Op. Att'y Gen. (July 10; J-66-866-81). An appropriation is considered "enacted" when the governor signs it into law. AS 01.10.070(f)(4). General law, apart from appropriations acts, creates legal, and in some cases, strong moral obligations to perform governmental functions in ways that require the payment of money to others before appropriations take effect. In the earlier opinion, we advised that obligations may be incurred and money expended under an appropriation if the only condition to its taking effect is the passage of time. *Id.* We observed that the chaos resulting from the temporary closure of government was compelling enough to justify the obligation of appropriations even before enactment. This extraordinary approach avoided the irrational result of a nonfunctioning government while the governor reviewed the budget bill. We cautioned executive agencies to incur obligations only for those appropriations that would not conflict with intended vetoes.

The interpretation set out in the 1981 opinion would allow executive agencies to obligate appropriations before they take effect. Under a federal appropriations law rubric, this process is known as "advance obligation" of appropriations. The federal Antideficiency Act expressly forbids the advance obligation of appropriations. 31 U.S.C. 665(a). The state public finance code contains some of the provisions of the federal statute but does not go so far as to prohibit advance obligations. AS 37.05.170 provides that

> No payment may be made and no obligation incurred against any fund unless the Department of Administration certifies that its records disclose that there is a sufficient unencumbered balance available in the fund and that an appropriation or expenditure authorization has been made for the purpose for which it is intended to incur the obligation.

The foregoing provision requires DOA to determine that a sufficient appropriation was "passed" before an obligation may be incurred against it. Section 170 does not require that the appropriation be "enacted" or even take effect before DOA can allocate spending authority to the agency charged with the power to expend it. The section merely requires the department to certify that spending authority does not exceed appropriations. Section 170 may be construed to mean that a certification may be made based on an appropriation that has passed the legislature but has not been enacted. The legislature must be presumed to know the proper phraseology to use to restrict DOA's discretion. By failing to adopt a stricter standard, after our 1981 opinion was issued, it can be presumed that the legislature accepted our construction of sec. 170.

Before enactment, all appropriations in the bill should be conservatively obligated to avoid possible conflicts with the governor's veto power. Agencies should coordinate with the office of management and budget (OMB) before obligating appropriations that may be stricken or reduced. The power to make an advance obligation, particularly for an appropriation that does not expressly carry a fiscal year designation by either being designated "supplemental" or some other provision in the bill, should not be considered a routine procedure.

The extraordinary power to spend before an appropriation takes effect is based in part on the rule of necessity. That is, a sovereign state may, in the absence of appropriations, expend amounts to perform necessary functions mandated by statute or the state constitution. Our 1981 opinion cited above relies on the rule of necessity in part to support the authority to obligate appropriations contained in the general appropriations act before the bill took effect. To fall within the rule of necessity applied in our earlier opinion, advance obligations should be incurred only if immediate expenditure is necessary to protect the public interest. In making the determination of necessity, the courts will give great weight to determinations of the agencies charged with the implementation of the appropriation. 3 C. Sands, Sutherland Statutory Construction sec. 65.03 (4th ed. 1986 rev'd). These determinations must be made in writing and retained in the official records of the implementing agencies.

To summarize our analysis of the effective-date issue, there is strong precedent for remedying the absence of an effective date for the supplemental appropriations contained in the bill. They can be given retrospective application to the beginning of the current fiscal year. Care should be taken to assure that the governor's power of veto is not compromised. For other

appropriations in the bill, there is authority in the form of an earlier opinion of this office that these appropriations can be obligated at least from the beginning of the fiscal year for which they are made. However, as an additional measure to assure the validity of an expenditure, any advance obligation incurred under those appropriations must be justified as necessary to protect the public interest.

Set out below is a review of specific provisions in the bill which merit special attention.

Page 2, line 23 -- Page 3, line 2: Section 1(b) and (c) of the bill are prime examples of the budget writer's continuing love affair with the concept of "program receipts." It appears that the intent of the legislature is to tie the appropriations for the increased cost of health care benefits to a return of reserves held by the insurer and amounts related to premium tax credits. The mention of premium tax credits causes some concern in that the legal fiction of program receipts seems to be very liberally applied to a new revenue source. It is possible to consider these provisions to be the equivalent of formulas to measure the amount appropriated from the general fund. This construction is preferred over one that considers the designation of "general fund program receipts" to be an admission that amounts attributable to a premium tax can be considered anything other than unrestricted revenue.

Page 7, lines 19 -- 23: Section 34 transfers $28,000 from the Agriculture Reserve Loan Fund, and then appropriates that amount for repairs to utilities at the McKinley Meat and Sausage Plant. The plant is owned by the loan fund. This section raises the issue of whether the legislature can transfer amounts out of a revolving loan fund by appropriation. The Alaska Constitution limits the use of appropriation bills to appropriations of money. Alaska Const., art. II, sec. 13. It could be argued that a transfer may only be authorized by an amendment to the enabling Act for the loan fund. We believe that the legislature's plenary power of appropriation most likely will be found to extend to uncommitted amounts contained in statutory revolving loan funds.

Page 11, lines 6 - 26: Section 55 appears to be part supplemental appropriation and part FY 1990 appropriation. Section 55(c) states that the appropriation shall be allocated between FYs 1989 and 1990. This means that the appropriation may be obligated immediately as a supplemental. Additionally, the title of this bill announces that this appropriation is to be considered to supplement existing FY 1989 operating and capital appropriations.

1990 Alaska Op. Atty. Gen. (Inf.) 221 (Alaska A.G.), 1990 WL 518034

Office of the Attorney General

State of Alaska
File No. 883-90-0070
May 18, 1990

***1 Re: SCS CSHB 428(Fin)(efd fld H) -- supplemental and special appropriations; fund transfer**

The Honorable Steve Cowper
Governor
State of Alaska
P. O. Box A
Juneau, Alaska 99811

Dear Governor Cowper:
At Shari Kochman's request on your behalf, we have reviewed SCS CSHB 428(Fin)(efd fld H), a bill making supplemental and special appropriations, and transferring an account within the general fund. Because we understood that you wished to sign the legislation on May 14, 1990, we gave oral advice to your office that day through Shari, outlining the concerns we have about this legislation but indicating that we saw no constitutional problem in the bill which would cause us to recommend a veto of the bill or any item in it on the grounds of legal or constitutional infirmity. We now confirm that advice.

You originally introduced this bill in the House to supplement fiscal year 1990 appropriations. 1990 House Jour. 2143. The version you transmitted contained an immediate-effective-date section. The House never obtained the two-thirds majority necessary for an immediate effective date. 1990 House Jour. 4018, 4063. The version transmitted back to the House on May 8, 1990 by the Senate, SCS CSHB 428(Fin) contained such a clause, but the House once again failed to muster the votes to pass it. House proceedings of May 8, 1990. 1990 House Jour. 4345-6.

Thus, this legislation poses the same question presented by last year's supplemental appropriation bill: whether expenditures can be made from these appropriations before the effective date of the legislation, which, under art. II, sec. 18, of the Alaska Constitution, is 90 days after enactment (and beyond the fiscal year for which most of them were appropriated). As we noted in our review of the 1989 session's supplemental appropriation bill, CSHB 154 (2d Fin)(efd fld), the answer is a cautious yes, with the recommendation that in certain circumstances findings be made in support of the necessity of early expenditure.

See 1989 Inf. Op. Att'y Gen. (May 25; 883-89-0076), copy attached. Because we treated the issue comprehensively just last year, our discussion here is somewhat abbreviated. This bill raises a few other issues which we also address below.

I. Effective-Date Issue

As in last year's bill, most of the appropriations made by this bill are supplemental to the current fiscal year's appropriations, and can be said to relate back to the effective date of the FY 90 budget, July 1, 1989. And, as mentioned in our last year's letter, expenditures may be based on those supplemental appropriations under the same statutes and conditions as the appropriations they supplement, unless modified by the legislature. They thus conform to art. IX, sec. 13, of the Alaska Constitution. This conclusion is consistent with the responsibility of the state to meet statutory and constitutional obligations that these supplemental appropriations are intended to fund. See, e.g., this bill's sec. 1 (longevity bonus payments required by AS 47.45), sec. 25 (increased contract jail costs), sec. 42 (additional operating costs for Commission on Judicial Conduct, art. IV, sec. 10, Alaska Constitution).[1]

***2** As we noted in our previous opinion, an appropriation is more of an administrative message from the legislative branch to the other branches of government than substantive legislation. Carr v. Frohmiller, 56 P.2d 644, 670 (Ariz. 1936). It is a " . . . legislative sanction for the disbursement of public revenue." City of Reno v. McGowan, 439 P.2d 985, 986 (Nev. 1968). An appropriation, under the legislature's plenary power to appropriate, grants authorization to spend money, but does not otherwise alter the general law and constitutional obligations that the appropriations are intended to meet. Indeed, the Alaska constitution provides that an appropriation bill cannot amend substantive law. Alaska Const., art. II, sec. 13.

Our conclusion that the money may be spent before the effective date of the bill is consistent both with apparent legislative intent and with well-settled rules of statutory construction. First, this is not a situation in which the legislature has clearly rejected requested appropriations. Rather, the legislature indicated that it intends to fund the functions for which the appropriations have been made, and, in most cases, intends that the expenditure be for obligations that are incurred before the end of FY 90 -- June 30, 1990.

Second, " . . . it cannot be presumed that the legislature would do a futile thing." N. Singer 2A Sutherland Statutory Construction, sec. 45.12 at 54 (Sands 4th ed. 1984 rev'd) (Sutherland). Interpreting the absence of an effective date in an appropriation bill strictly to prohibit the expenditure of the money until 90 days after the bill becomes law could render most of the appropriations in the bill futile. Such a result would defeat the bill's purpose. The rule of reason set out in the section of Sutherland cited above suggests that such a " . . . departure from the literal construction of a statute [i.e., the absence of an FY 90 effective date, in this instance] is

justified when such a construction would produce an absurd and unjust result and would clearly be inconsistent with the purposes and policies in question." Sutherland, sec. 45.12 at 54.

It would be futile and irresponsible to wait until August to pay for statutory programs and functions that expired in May -- programs and functions that are supposed to be ongoing.

The relation-back of supplemental appropriations to the appropriations they supplement resolves the effective-date problem for the vast majority of the appropriations contained in the bill. We are advised by the Office of Management and Budget ("OMB") that the appropriations contained in secs. 1 -- 60 of the bill are tied to appropriations from this or prior fiscal years. We understand that, in these sections, to the extent that the supplemental nature of the appropriation is not readily apparent, budget documents submitted in the course of the legislature's deliberation on the bill support the relationship to prior appropriations.

***3** Where the supplemental nature of the appropriation is not clear, the Administration may resort to the rule of construction outlined above, but with the caution that the obligation incurred must be necessary to protect the public interest.[2] It should also be noted that, as the rule suggests, the result of a strict interpretation of the absence of an effective date must be clearly inconsistent with the overall purpose of the legislation.

In any event, as we noted in our 1989 opinion, at pages 3 and 4, Alaska's law does not prohibit advance obligation of appropriations.

Further, the legislature is presumed to know of prior interpretations of legislation, as well as the rules of statutory construction, when it acts. Sutherland, sec. 45.12 at 55. It must thus be presumed to know of our conclusion that AS 37.05.170 authorizes the Department of Administration (DOA) to certify the availability of money even before an appropriation is enacted. See 1981 Inf. Op. Att'y Gen. (July 10; No. J-66-866-81). It must also be presumed to know of our 1989 opinion suggesting that the failure of the legislature to approve an immediate effective date does not necessarily preclude the incurring of obligations based on supplemental appropriations, and other appropriations if necessary to carry out government functions. Since the legislature has not changed the statute or amended its approach to supplemental appropriations, we may assume that it approves these interpretations and, therefore, that obligation of the money in advance of the bill's effective date is consistent with the legislature's intent in enacting the bill.

In sec. 61 of the bill (page 10, lines 22 -- 24), a transfer of money from the mental health trust income account (created within the general fund) to the unreserved general fund (see AS 37.14.011 and 37.14.021[3]), is, under that section's own terms, to occur on July 1, 1990. We believe that, although the bill's technical effective date falls after the date the transfer is to occur, the transfer will be deemed to have occurred on July 1, 1990, much in the way a bill will be applied retroactively

to a date certain even if an immediate effective date fails. See 1989 Inf. Op. Att'y Gen. at 2 and 3 (June 1; 883-89-0036; economic limit factor may be applied retroactively even though immediate effective date fails).

Notwithstanding the foregoing analysis, we must caution, as we did last year and in our 1981 opinion, that obligation and expenditure in advance of the technical effective date must not be undertaken lightly, and when undertaken, may be only on the grounds of necessity. That is, a finding, preferably in writing, should be made, to show that the obligation or expenditure is necessary to protect the public interest. See 1989 Inf. Op. Att'y Gen. at 5 (May 25; 883-89-0076).

II. Other Legal Issues

At least one of the appropriations that does not on its face appear to be supplemental has not been listed in the title of the bill. The title of the bill is as follows:

***4** An Act making miscellaneous supplemental appropriations for fiscal year 1990 and prior fiscal years; making special appropriations for costs of Team Alaska and Arctic Winter Games dues; and making a transfer of an account balance within the general fund.

No mention is made of miscellaneous special appropriations. There is no apparent relationship between sec. 62 of the bill (page 10, line 26 -- page 11, line 1) concerning the improvement of moose habitat and a prior-year appropriation. Nonetheless, we do not believe that a court would find this a violation of the constitutional requirement that the subject of a bill be expressed in the title, as the courts construe the title provision of art. II, sec. 13, to require adequate notice of the purposes of a bill sufficient to give notice of the bill's general contents, but will not set aside an enactment unless the violation is substantial and plain. Suber v. Alaska State Bond Committee, 414 P.2d 546, 557 (Alaska 1966). Here the appropriation could well be related to an ongoing activity of the Department of Fish and Game, or it may fit within some legislative perception of the nature of a supplemental appropriation. ("Supplemental appropriation" is not defined in statute, although referred to in AS 37.07.070 and 37.07.100.) However, we draw attention to the issue because we are concerned about the possibility that a close case could result in the invalidation of an appropriation.

We note that sec. 76 of the bill declares that the appropriations madee by secs. 47, 62, and 67 are for capital projects and as such are covered by AS 37.25.020, which makes a capital appropriation valid for the life of the project and permits its unexpended balance to be carried forward from one fiscal year to the next. The appropriations in question are for a fish ladder and fish maturation pond (sec. 47 at page 8, lines 22 -- 27); the moose habitat referred to above (sec. 62 at page 10, line 26 -- page 11, line 1); and erosion repair to property adjacent to and in the vicinity of a state highway (sec. 67 at page 12, lines 5 -- 8) which we understand from the Department of Transportation and Public Facilities was made necessary by the collapse of a highway culvert.

It is not clear that all three of these appropriations (e.g., the moose habitat one) are really for "capital projects," as that term is generally understood. The legislature has gotten into the habit of designating an appropriation "capital" simply to protect against the lapse of any unexpended and unobligated amount at the end of the fiscal year, by calling upon the automatic application of AS 37.25.020. However, appropriations lapse only by virtue of AS 37.25.010 (also see art. IX, sec. 13, Ak. Const.), which provides in part that "[t]he unexpended balance of a one-year appropriation . . . lapses on June 30 of the year for which appropriated." All that need be done to counter the lapse is declare that the appropriation is not a one-year one (if that is not obvious by the nature of the appropriation itself); this approach avoids raising questions of what "capital" means and avoids issues of validity based on the misuse of the term. Nevertheless, the intent of the legislature seems clear.

III. Miscellaneous Matters

*5 Sections 63 and 64 (page 11, lines 2 -- 6) are appropriations for which no fiscal year is identified in their text. However, they are to lapse on June 30, 1992, under sec. 74 (page 13, lines 7 -- 9).

Section 33 (page 6, lines 7 -- 14) sets criteria for the allocation of an appropriation for snow and ice removal to municipalities. A question arises about whether this language constitutes a valid condition upon an appropriation, or whether imposition of the criteria is an infringement of the executive's authority to administer programs in violation of the separation of powers. Thus, while the criteria are closely related to the apparent object of the legislation, we must observe that in balance they may be more suitable for substantive legislation than an appropriation, which is limited to the designation of an amount, the statement of a purpose, and the designation of the portion of public revenue set aside for the appropriation. 1987 Inf. Op. Att'y Gen. at 2 (June 26; 883-87-0089). In any case, the executive branch is permitted by AS 37.07.080(e) to transfer money between allocations.

Again, as we noted in our oral advice to your office, the bill poses no legal or constitutional problem that would have suggested the exercise of your veto power. If agencies have questions about specific appropriations we would be happy to address them directly.

Sincerely yours,

Douglas B. Baily
Attorney General

Footnotes

1 It is also consistent with the approach taken by federal comptrollers general when confronted with the same question. 27 Comp. Gen. 96 (1947); 25 Comp. Gen. 601 (1946); 20 Comp. Gen. 769 (1941).

2 For example, sec. 34 (page 6, lines 15 -- 18), a reimbursement under an agreement with a local government, lacks a reference to the appropriate fiscal year. We understand that the appropriation is supplemental to an existing appropriation to the Department of Transportation and Public Facilities, and may be said to relate back. However, we must note that the legislature's intentions are less clear where, unlike the overwhelming majority of the appropriations in this bill, there is no reference to a fiscal year. Thus, early obligation and expenditure of this appropriation must be approached with caution.

3 Amended this session by HCS CSSB 493(Fin).

1990 Alaska Op. Atty. Gen. (Inf.) 221 (Alaska A.G.), 1990 WL 518034

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1981 WL 38705 (Alaska A.G.)

Office of the Attorney General

State of Alaska
File No. J-66-866-81
July 10, 1981

Expenditures after July 1, 1981

***1** Hon. Edmund Orbeck
Commissioner
Department of Labor

You have asked whether you may legally expend money after July 1, 1981, when the general appropriation bill has been passed by the legislature but not yet been signed by the governor, and if so, what procedures should be followed.

First, by far the vast majority of your expenditures during July should be for expenses which have previously been incurred and which will be paid for from appropriations for fiscal year 1981. Second, to the extent that your expenditures are of trust or custodial moneys—for example, federal categorical grants or payments—no appropriation is required. Finally, while perhaps technically requiring an advance from a surplus appropriation—for example, from the Reserve for Emergency Operating Expense Account[a1]—it seems likely that an agency's incurring relatively modest obligations through the use of travel requests, warrants, and the like against the general appropriation bill for fiscal year 1982 falls either under the legal maxim lex non curat de minimis, that is, the law cares not about trifles, or under the rule of necessity. See Commonwealth ex rel. Carroll v. Tate, 274 A.2d 193 (Pa. 1971), cert. denied, 402 U.S. 974 (1971).

There is no real, valid question that the general appropriation bill will become law in due course. It has already passed the legislature and will be approved in large part by the governor. The only condition on that event is the passage of time. Because the constitution requires a general eral appropriation bill for each fiscal year, Alaska Const., art. IX, § 12, it can be argued that the bill relates back to June 1, notwithstanding that it did not take effect at that time. Therefore, the only real question or problem of any legal import concerns those appropriations which may be vetoed.[aa1]

In our view, no appropriations for grants, special projects, or other unusual purposes or for extraordinary amounts for ordinary purposes should be expended or obligated in their entirety or in significant part before the governor approves the bill. These are the items of appropriation which

are most likely to be reduced or struck from the bill. So too, whenever an agency to which an appropriation has been made has any reasonable basis for concluding that the appropriation may be struck or reduced, the agency should neither expend nor obligate the appropriation—or at any event, not more than that portion of the appropriation which it has a reasonable basis for concluding will not be struck or reduced. Each agency should approach the matter in as conservative a way as is practicable in order to ensure that any expenditures or obligations made prior to the effective date of the bill will be restricted to those which are essential and will, relatively speaking, be a trifle and well within the amounts remaining after the item vetoes.

A long term solution probably requires a change in the fiscal year from June 1 to October 1. Given the pressures under which it must operate, the legislature cannot reasonably be expected to foreshorten the existing budget process. In the meantime, you must deal with the practical requirements of your department in a practical way. The general appropriation bill has been passed by the legislature and has, for all practical purposes, been enacted. A constitution which mandates provision for the public health, safety, and welfare should not be construed to cause senseless hardship, pain, and suffering to innocent persons. The rule of necessity controls here, and you may and must expend or incur the minimum amount required to carry out the duties and functions prescribed to your department by law.

***2** Because of its general application, a copy of this memorandum is being furnished to the heads of all the principal departments and to independent and quasi-independent boards and commissions.

Wilson L. Condon
Attorney General
Rodger W. Pegues
Assistant Attorney General

Footnotes

a1 An advance, rather than an expenditure, from the account is suggested. Under the plain language of AS 37.05.139(b)(1), the money from the account could actually be expended to meet the shortfall caused by the legislature's failure to pass the general appropriation bill in a timely manner.

aa1 We reject out of hand the view that no money can be expended. We are not dealing with a situation where the legislature has not passed the general appropriation bill. While, at this time, the general appropriation bill has not yet taken effect, there can be no question that the legislature has passed that bill and authorized the expenditures. Bringing the services of government to a halt because the chief executive has not yet had the time allotted by the constitution to review that bill and to exercise the item veto to reduce or strike items in the bill is not required by the constitution and would be irrational and utterly irresponsible.

1981 WL 38705 (Alaska A.G.)

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

TREG R. TAYLOR, in his official capacity as ATTORNEY GENERAL of the STATE OF ALASKA

Plaintiff,

v.

ALASKA LEGISLATIVE AFFAIRS AGENCY,

Defendant.

Case No. 3AN-21-________ CI

[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Having considered the Attorney General's Motion for Summary Judgment, and any opposition thereto, the Motion for Summary Judgment is GRANTED.

DATED: ________________.

____
Superior Court Judge

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