

MEMORANDUM

State of Alaska

Department of Law


To: Randy Ruaro
Deputy Chief of Staff
Office of Governor

Date: April 13, 2010

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Subject: Certificates of Participation

Certificates of participation (COPs) are a capital project financing device used in conjunction with a lease purchase agreement. The proceeds from the sale of COPs are used to fund the construction of a project. The COPs are secured by the proceeds of the lease payments, which are subject to appropriation. In this regard, COPs are similar to revenue bonds, for which debt service is also subject to appropriation.

In the *Carr-Gottstein* case, the Alaska Supreme Court affirmed the decision of the Superior Court which held that COPs do not violate the constitutional prohibition against contracting debt without a vote of the people (art. IX, sec. 8, Alaska Const.) where the lease “(1) contains a non-appropriation clause; (2) limits recourse to the leased property; and (3) does not create a long-term obligation binding future generations or Legislatures.” *Carr-Gottstein Properties v. State*, 899 P.2d 136, 144 (Alaska 1995).

Lease-purchase financing has been used multiple times for projects such as the State Virology Lab in Fairbanks, the Anchorage Times Building, and the Court Plaza Building (Spam Can) in Juneau. There is a statutory process in place to provide notice and obtain legislative approval for this kind of financing. AS 36.30.085.

cc: Craig Tillery, Department of Law, Office of the Attorney General