

# LEGAL SERVICES

## DIVISION OF LEGAL AND RESEARCH SERVICES LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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### MEMORANDUM

February 24, 2012

**SUBJECT:** Dedicated funds (SB 178, Work Order No. 27-LS1255\A)

**TO:** Senator Bert Stedman  
Attn: Darwin Peterson

**FROM:** Lisa Moritz Kirsch   
Legislative Counsel

You have asked whether SB 178 creates a dedicated fund in violation of article IX, sec. 7 of the Constitution of the State of Alaska. I believe it does not because the money in the proposed endowment fund would be subject to appropriation by the legislature for any public purpose.

State funds may be appropriated into and out of the fund.<sup>1</sup> New subsection AS 37.14.870(b) provides:

(b) Each fiscal year, the legislature may appropriate the amount identified under (a) of this section, *or any other amount*, from the Alaska operating endowment fund *for any public purpose*. (emphasis added)

Therefore the use of the fund is not limited to any specific purpose, and the amount the legislature may appropriate is not limited. The Department of Revenue will calculate an amount it determines "available for appropriation" under AS 37.14.870(a), but under the subsection quoted above the legislature is free to appropriate that amount or some other amount.

The Alaska Supreme Court has held that similar language creating the Alaska marine highway system fund (AS 19.65.060) did not create a dedicated fund. According to the court, "the expectations created by the act are merely a 'talking point' because they impose no legal restraint on the appropriation power of the legislature."<sup>2</sup> Here the act explicitly states that the legislature may appropriate money in the fund for any public purpose. Please let me know if you have additional questions.

LMK:plm  
12-129.plm

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<sup>1</sup> AS 37.14.850; AS 37.14.870(b).

<sup>2</sup> *Sonneman v. Hickel*, 836 P.2d 936, 940 (Alaska 1992).