

House Bill 333

Background: Referenced Statutes

Sec. 15.13.116. Disbursement of campaign assets after election.

(a) A candidate who, after the date of the general, special, municipal, or municipal runoff election or after the date the candidate withdraws as a candidate, whichever comes first, holds unused campaign contributions shall distribute the amount held on February 1 for a general election or within 90 days after a special election. The distribution may only be made to

(1) pay bills incurred for expenditures reasonably related to the campaign and the winding up of the affairs of the campaign, including a victory or thank you party, thank you advertisements, and thank you gifts to campaign employees and volunteers, and to pay expenditures associated with post-election fund raising that may be needed to raise funds to pay off campaign debts;

(2) make donations, without condition, to

(A) a political party;

(B) the state's general fund;

(C) a municipality of the state; or

(D) the federal government;

(3) make donations, without condition, to organizations qualified as charitable organizations under 26 U.S.C. 501(c)(3) if the organization is not controlled by the candidate or a member of the candidate's immediate family;

(4) repay loans from the candidate to the candidate's own campaign under AS 15.13.078(b);

(5) repay contributions to contributors, but only if repayment of the contribution is made pro rata in approximate proportion to the contributions made using one of the following, as the candidate determines:

(A) to all contributors;

(B) to contributors who have contributed most recently; or

(C) to contributors who have made larger contributions;

(6) establish a fund for, and from that fund to pay, attorney fees or costs incurred in the prosecution or defense of an administrative or civil judicial action that directly concerns a challenge to the victory or defeat of the candidate in the election;

(7) transfer all or a portion of the unused campaign contributions to an account for a future election campaign; a transfer under this paragraph is limited to

(A) \$50,000, if the transfer is made by a candidate for governor or lieutenant governor;

(B) \$10,000, if the transfer is made by a candidate for the state senate;

(C) \$5,000, if the transfer is made by a candidate for the state house of representatives; and

(D) \$5,000, if the transfer is made by a candidate for an office not described in (A) - (C) of this paragraph;

(8) transfer all or a portion of the unused campaign contributions to a public office expense term account or to a public office expense term account reserve in accordance with (d) of this section; a transfer under this paragraph is subject to the following:

(A) the authority to transfer is limited to candidates who are elected to the state legislature;

(B) the public office expense term account established under this paragraph may be used only for expenses associated with the candidate's serving as a member of the legislature;

(C) all amounts expended from the public office expense term account shall be annually accounted for under AS 15.13.110(a)(4); and

(D) a transfer under this paragraph is limited to \$5,000 multiplied by the number of years in the term to which the candidate is elected plus any accumulated interest; and

(9) transfer all or a portion of the unused campaign contributions to a municipal office account; a transfer under this paragraph is subject to the following:

(A) the authority to transfer is limited to candidates who are elected to municipal office, including a municipal school board;

(B) the municipal office account established under this paragraph may be used only for expenses associated with the candidate's serving as mayor or as a member of the assembly, city council, or school board;

(C) all amounts expended from the municipal office account shall be annually accounted for under AS 15.13.110(a)(4); and

(D) a transfer under this paragraph is limited to \$5,000.

(b) After a general, special, municipal, or municipal runoff election, a candidate may retain the ownership of one computer and one printer and of personal property, except money, that was acquired by and for use in the campaign. The current fair market value of the property retained, exclusive of the computer and printer, may not exceed \$5,000. All other property shall be disposed of, or sold and the sale proceeds disposed of, in accordance with (a) or (c) of this section. Notwithstanding any other provision of this chapter,

(1) a candidate may (A) retain a bulk mailing permit that was paid for with campaign funds, and (B) use personal funds, campaign funds, or unused campaign contributions transferred to a public office expense term account under (a)(8) of this section to pay the continuing charges for the permit after the election; money used to continue the life of the permit is not considered to be a contribution under this chapter; in addition to any other use permitted under this chapter, during the candidate's term of office, the candidate may use the bulk mailing permit for mailings associated with service in the office to which the candidate was elected; during the candidate's term of office, if the candidate files a declaration of candidacy or the document necessary to permit the candidate to incur election-related expenses under AS 15.13.100 for the same or a different elective office, the candidate may also use the bulk mailing permit in that election campaign;

(2) a candidate may retain campaign photographs and use the photographs for any purpose associated with service in the office to which the candidate was elected;

(3) a candidate may retain seasonal greeting cards purchased with campaign funds; and

(4) campaign signs prepared for an election that has already taken place have no monetary value and may be retained or disposed of at the candidate's discretion.

(c) Property remaining after disbursements are made under (a) - (b) of this section is forfeited to the state. Within 30 days, the candidate shall deliver the property to the Department of Revenue. The Department of Revenue shall deposit any money received into the general fund and dispose of any other property in accordance with law.

(d)** After a general or special election, a candidate for the state legislature who has been elected to the state legislature in that election may, from the amount retained in the public office expense term account reserve under this subsection, transfer to a public office expense term account not more than \$5,000 each calendar year for use only for expenses associated with the candidate's serving as a member of the legislature, except that a senator serving a two-year term may transfer not more than \$10,000 each calendar year. A candidate for the senate may transfer up to \$20,000 from unused campaign contributions to a public office expense term account reserve. A candidate for the house of representatives may transfer up to \$10,000 from unused campaign contributions to a public office expense term account reserve. The public office expense term account reserve may only be used to make transfers to the public office expense term account. At the end of the candidate's term of office, a balance in the public office expense term account reserve must be disposed of as provided in (a) of this section but may not be disposed of as provided in (a)(1), (4), or (6) - (9) of this section. All amounts expended under this subsection shall be annually accounted for under AS 15.13.110 (a)(4).

****House Bill 333 repeals AS 15.13.116(d)**

MEMORANDUM

State of Alaska DEPARTMENT OF ADMINISTRATION ALASKA PUBLIC OFFICES COMMISSION

TO: Representative Max Gruenberg
FROM: Martha Tansik, Associate Attorney II
CC: Representative Mike Hawker
Paul Dauphinais, Executive Director
Jerry Anderson, Associate Director
Heather Hebdon, Paralegal II
DATE: February 24, 2012
SUBJECT: Public Office Expense Term Accounts and HB 333

The following memorandum responds to questions regarding the Public Office Expense Term accounts and HB 333. It was drafted at the request of Representative Gruenberg.

Purpose of POET Accounts

The POET account is intended to provide an opportunity to legislators to use excess campaign funds to cover costs reasonably associated with their service as a legislator. It appears that the POET reserve was created to avoid tax liability.

Legislative History of the POET Account

Since the 1996 Campaign Finance Reform, creating the account, the POET account portion of the disbursement statute (AS 15.13.116) has been amended twice: 1998, and 2002.

In 1996, (19 ch 48 SLA 1996) an option was added to campaign disbursement options to allow successful candidates to transfer a portion of leftover campaign assets into a single account to help provide for their legislative duties.

In 1998, SB 275 (8-10 ch 14 SLA 1988) SB 273 changed the name of the account presently known as the “POET” account from its original name “Legislative Office Account.” This change was intended to clarify the confusion between this account created as part of Campaign Finance Reform and the account controlled by Legislative Affairs. February 12, 1998, an amendment was presented to the House State Affairs Committee (having been entered by Senator Donley) and the account was split into the POET Account and the POET Reserve Account. This was later clarified as being “to prevent negative tax consequences...can create a public office expense term reserve and then transfer [the funds] in there...”¹ and “to allow funding to be transferred at \$5 thousand dollars a year to minimize the tax debt.”²

¹ Minutes, AK House State Affairs Committee Hearing on SB275, 20th Legislature Reg. Session (Apr. 04, 1998) (Number 0229.)

² Minutes, AK House Finance Committee Hearing on SB275, 20th Legislature Reg. Session (Apr. 24, 1998)

At the same time, language within the bill was changing to ensure that money could not be funneled back into one's campaign if it was not spent on costs reasonably related to one's service in office.³ "...the bill closes that loophole, and any money that was sitting in my public office expense term reserve at the end of my term can only be used for charitable donations or to repay contributors."⁴

In 2001, the Legislature again considered the POET account and its reserve. There was considerable discussion about the purpose and nature of the two accounts. At that time, APOC Staff reaffirmed that the creation of the two accounts was not at the suggestion of the Commission and that it was Staff's understanding that it was created for tax liability purposes. APOC Staff reaffirmed that there appeared to be no reason to have the double accounts.⁵ At the next reading the accounts had been unified and remained so until the bill reached the House Rules Committee on April 19, 2001. However, upon leaving the House Rules Committee and going to Conference Committee on May 6, 2001, the language had reverted to the split accounts. POET funds have remained bifurcated ever since.

APOC Staff position on HB 333

APOC staff takes no position on this proposed legislation. However, there has long been concern regarding the ability to roll POET account funds back into one's campaign. For this reason, the excess funds in POET reserve (and POET account per APOC Advisory Opinion 12-01-CD) are only permitted to be distributed to a subset of the options of campaign funds (AS 15.13.116 (2), (3), and (5)) and can only be dispersed at the end of a legislator's term. The legislative term ends after the General election and this disbursement caveat prevents unintentional rolling of funds from the POET account into the election.

HB 333, as currently written, appears to allow distribution of POET funds at any point until the end of the Legislator's term. This may allow money to be donated from a POET account to a political party, interest group, or former contributor, only to have it returned immediately as a campaign contribution or in some way be perceived as a benefit to the candidate. However, preventing the disbursement of the POET funds until the end of a Legislator's term, after the election, maintains the policy of preventing POET funds from potentially becoming campaign contributions

APOC Staff respectfully recommends that the word "by" be reverted to "at" in order to close the potential loophole.

³ Minutes, AK House State Affairs Committee Hearing on SB275, 20th Legislature Reg. Session (Feb. 12, 1998) (Number 0622.)

⁴ Minutes, AK House State Affairs Committee Hearing on SB275, 20th Legislature Reg. Session (Apr. 04, 1998) (Number 0229.)

⁵ Minutes, AK Senate State Affairs Committee Hearing on SB275, 22th Legislature Reg. Session (Feb. 22, 2001) (Number 0359.)