

# STATE OF ALASKA

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March 27, 2012

Anna Latham, Legislative Aide  
Office of Representative Olson  
State Capitol, Room 24  
Juneau, Alaska 99801

Re: House Bill No. 347

Dear Ms. Latham,

You have asked two questions about House Bill No. 347—a bill which will limit a municipality's ability to appropriate public money to support or oppose a ballot initiative or question. Your first question was whether this proposed law infringes on a municipality's free speech rights. The answer is no. Second, you asked whether the law would prohibit a municipal officer from flying to Juneau to testify on issues related to their district during session. The answer is also no. Allow me to elaborate.

First, House Bill No. 347 is constitutional.

Governmental entities—including municipalities—have no independent First Amendment rights.<sup>1</sup> Municipalities are not treated like individual citizens for purposes of constitutional inquiries, and the legislature is allowed to restrict municipal appropriations for speech related activities.<sup>2</sup> Recently, in *Associated Students of Univ. of Cal. at Santa Barbara v. Regents of the Univ. of Cal.*, a federal district court held that a public university's decision to prohibit using public funds for ballot initiative speech was not a violation of a student group's constitutional rights.<sup>3</sup>

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<sup>1</sup> See, e.g., *Demery v. Arpaio*, 378 F.3d 1020, 1032-33 (9th Cir. 2004) (affirming that “the Bill of Rights protects the individual from the government, not the other way around”).

<sup>2</sup> *Buckley v. Valeo*, 424 U.S. 1, 93-108 (1976). See also *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 546, 549 (1983) (affirming that First Amendment rights do not require state subsidization of First Amendment speech).

<sup>3</sup> *Associated Students of Univ. of Cal. at Santa Barbara v. Regents of the Univ. of Cal.*, 2007 WL 196747, at 4 (N.D. Cal. 2007).

In House Bill No. 347, the legislature proposes to limit a municipality's ability to spend during the ballot initiative process. The new law would allow a municipality to appropriate ballot initiative funds only if, by popular vote, the citizens of the municipality agree to do so. The legislature is also considering whether to eliminate the municipality's ability to fund ballot initiative activities altogether. Either law would be constitutional. If challenged, there would be no genuine issue of fact regarding whether the money appropriated was public money. As such, the legislature's decision to restrict funding is simply a decision not to subsidize free speech; a choice which is always at the discretion of the legislature.<sup>4</sup> And because this law would not restrict an individual's freedom of speech, it is constitutional.

Second, House Bill No. 347 does not prevent a municipal member from representing the district's interests during the legislative session. Municipal officers acting within the scope of their duties are exempt from Alaska's comprehensive lobbying laws.<sup>5</sup> Appropriating funds for a municipal officer to travel to Juneau during session to "lobby" is not implicated by House Bill No. 347.<sup>6</sup>

Sincerely,

MICHAEL C. GERAGHTY  
ATTORNEY GENERAL

By: 

John M. Ptacin  
Assistant Attorney General

JMP/ljt

cc: Deborah Behr, Section Chief, Department of Law, Legislation & Regulations  
Section (*via email*)  
Cori Badgley, Legislative Liaison, Department of Law, Legislation & Regulations  
Section (*via email*)

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<sup>4</sup> *Id.* at 8.

<sup>5</sup> AS 24.45.161(a)(2) (2010).

<sup>6</sup> Under House Bill No. 347, a municipal member could not go to Juneau during session solely for purposes of ballot initiative advocacy. But that is not likely ever the intention of sending a municipal member to Juneau during the session.