

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
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STATE OF ALASKA

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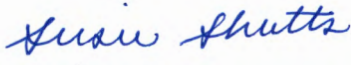
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 6, 2017

**SUBJECT:** Authority of an assembly or council to bind a future assembly or council (Work Order No. 30-LS0794)

**TO:** Representative Cathy Tilton  
Attn: Heath Hilyard

**FROM:** Susie Shutts   
Legislative Counsel

You requested a legal opinion regarding whether a municipal assembly or council may bind a future assembly or council with regard to an optional municipal property tax exemption or deferral under AS 29.45.050. Specifically, could a future assembly or council repeal an ordinance providing for an optional tax exemption at any time, thereby nullifying any agreement between a municipality and a property owner for an exemption or deferral?

Yes, a future or current assembly or council could repeal an ordinance providing for an optional tax exemption. Just as one legislature cannot bind a future legislature, one municipal assembly or council cannot bind a future assembly or council.

The Alaska Supreme Court has noted that "[i]t is a well-established principle that one legislature cannot abridge the power of a succeeding legislature."<sup>1</sup> As you point out, a future legislature, municipal assembly, or city council could therefore amend or repeal any portion of a law adopted by a previous legislature, assembly, or council, respectively.

I am assuming that the type of agreement between a municipality and a property owner that you are referencing is one for payment in lieu of taxation (PILT). As explained in a March 27, 2017, memorandum to your office, even if state law were amended to authorize a municipality to enter into a particular PILT agreement, such a contract would raise a constitutional issue under art. IX, sec. 1, Constitution of the State of Alaska, which provides: "The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article." A court could find that a PILT agreement contracts away the state's, or a municipality's, power of taxation, in

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<sup>1</sup> *Weiss v. State*, 939 P.2d 380, 397 (Alaska 1997).

Representative Cathy Tilton

April 7, 2017

Page 2

contravention of art. IX, sec. 1.<sup>2</sup> If, however, a court *were* to uphold a PILT contract, a future legislature or municipality may be precluded from changing an existing, valid contract under art. I, sec. 15, Constitution of the State of Alaska.<sup>3</sup>

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<sup>2</sup> *See, e.g.*, 2016 Op. Alaska Att'y Gen. (June 23, 2016) (opining that the state cannot enter into a contract that purports to prohibit the legislature from changing tax terms in the future, in disagreement with earlier attorney general opinions that concluded long-term, irrevocable tax exemptions were constitutionally permissible).

<sup>3</sup> Art. I, sec. 15, Constitution of the State of Alaska, provides, in part "[n]o law impairing the obligation of contracts, [. . .] shall be passed."