

# LEGAL SERVICES

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### MEMORANDUM

August 16, 2021

**SUBJECT:** Permanent Fund Dividend: Constitutionally Required  
(CSSJR 6(JUD); Work Order No. 32-LS1122\W)

**TO:** Representative Jonathan Kreiss-Tomkins

**FROM:** Emily Nauman  
Deputy Director 

You asked if a resolution amending the constitution to require that a permanent fund dividend be paid according to a formula in statute was enacted, whether a court would allow the legislature to appropriate funds constitutionally required to be expended for dividends under the formula for another purpose. Although there may be a specific set of circumstances where a court would allow the legislature to deviate from the constitutionally required dividend according to the statutory formula,<sup>1</sup> that circumstance is extremely unlikely. In other words, if a resolution amending the constitution to require that a permanent fund dividend be paid under a statutory formula is enacted, the legislature should consider unavailable for appropriation the funds necessary to pay for dividends under that formula.<sup>2</sup>

During our phone call on August 10, we discussed what would happen if insufficient state revenues resulted in the permanent fund dividend transfer competing with other programs and protections the legislature is required to provide for. The legislature has several constitutional obligations. Under art. VII, sec. 1, of the Alaska Constitution, the "legislature shall by general law establish and maintain a system of public schools." Under art. VII, sec. 4, the "legislature shall provide for the promotion and protection of public health." And under art. VII, sec. 5, the "legislature shall provide for public welfare." Despite these requirements, it is unlikely that a court would permit the legislature to use funds dedicated for dividends in the constitution.. The required provisions for schools, public health, and public welfare in art. VII are general and leave to the legislature the ability to determine for itself what is sufficient to meet those constitutional requirements. Unlike those general requirements, the dividend structure

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<sup>1</sup> This memorandum assumes that the statutory formula for the payment of dividends is clear and has no room for interpretation or manipulation by the legislature. If the formula was unclear or left room for legislative interpretation, it would be subject to at least some legislative interpretation.

<sup>2</sup> Of course, the legislature could always change the statutory formula.

proposed would be specific. A court will not construe a general statute to act as a repeal of a specific provision.<sup>3</sup> Where a general statute and a specific one conflict, the specific statute controls.<sup>4</sup> In addition, it is long held-precedent that later-in-time enactments will control.<sup>5</sup> Since the proposed amendment would be enacted after the existing general provisions, and because it is more specific than the general requirements in art. VII, I believe a court would find that the mandatory dividend transfer controls.

All that said, it is possible a court could find that the legislature has so abandoned its other constitutional requirements that it might allow the legislature to appropriate from the amount dedicated for dividends. At this time, I cannot think of a situation that would result in that outcome. Certainly, it would be a highly specific fact pattern, so I cannot completely rule it out.

In sum, it is extremely unlikely that a court would find that the legislature could deviate from a statutory dividends formula if the constitution required dividends to be paid according to that formula, this remains true even if the funds were being used for another constitutionally required purpose.

If I may be of further assistance, please advise.

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<sup>3</sup> *Rodgers v. United States*, 185 U.S. 83, 88 (1902).

<sup>4</sup> 2B Norman J. Singer, *Sutherland Statutory Construction*, sec. 51:5 (7th Ed. 2012).

<sup>5</sup> *Whitney v. Robertson*, 124 U.S. 190, 195 (1888).