

# LEGAL SERVICES

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

(907) 465-2450  
LAA.Legal@akleg.gov  
120 4th Street, Room 3


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

## MEMORANDUM

January 16, 2024

**SUBJECT:** Primarily vs exclusively (SB 167; Work Order No. 33-LS1065\S)

**TO:** Senator Robert Myers  
Attn: Dawson Mann

**FROM:** Andrew Dunmire   
Legislative Counsel

Senate Bill 167, (Work Order No. 33-LS1065\S) amends the required municipal exemptions statute (AS 29.45.030) to state that property used *primarily* for nonprofit religious, charitable, cemetery, hospital, or educational purposes is exempt from municipal taxation. You asked whether this language conflicts with art. IX, sec. 4, of the Constitution of the State of Alaska, which declares that "[a]ll, or any portion of, property used *exclusively* for nonprofit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation."<sup>1</sup>

The constitution sets outer bounds on the state's power. Stated another way, the relevant clause of art. IX, sec. 4, means that the state may not tax property that is used exclusively for one of the listed purposes. But the plain text of that section does not prohibit the legislature from enacting a tax exemption that is broader than what the constitution requires. To the contrary, art. IX, sec. 4, explicitly recognizes that "[o]ther exemptions of like or different kind may be granted by general law."<sup>2</sup>

The minutes from the Constitutional Convention reflect that art. IX was drafted to provide future legislatures substantial leeway in enacting tax regimes. While introducing the Committee on Finance's draft of what would become art. IX, Secretary White had this remark:

[T]he Committee feels that this is as brief and straightforward an article on finance and taxation we could arrive at. It is aimed to assure a sound system of finance and taxation and leave as much leeway to the state as possible and the sound practices to be carried out in the future.<sup>3</sup>

---

<sup>1</sup> Emphasis added.

<sup>2</sup> The terms *by law* or *by general law* "means by the Alaska Legislature." *Municipality of Anchorage v. Regul. Comm'n of Alaska*, 215 P.3d 327, 332 n.26 (Alaska 2009); *see also* art. XII, sec. 11, Constitution of the State of Alaska.

<sup>3</sup> Constitutional Convention minutes at 1109.

When Secretary White introduced sec. 4, he stated:

Section 4 deals with exemptions from taxation, most of it is pretty standard. The reason in the first sentence for the words, 'with such exceptions as the legislature may direct' in referring to taxation of real and personal properties of the state and of its political subdivisions, is to leave to future legislatures the decision as to whether normally business enterprises of the state or political subdivision should or should not be taxable. The exemption given to religious, charitable, cemetery, or educational purposes is pretty standard. These are the only ones we have attempted to spell out here.<sup>4</sup>

Later, another delegate asked for more detail about sec. 4, and Secretary White said that the intent of this clause is to allow for exemptions on the specified property but allow for taxation on income-producing property:

[T]he intent of the Committee here is to allow for tax exemptions on property used for religious, charitable, cemetery, or educational purposes, to be exempt from taxation, but to provide for taxation of income-producing property, and furthermore, to allow for proration of such income-producing property. For example, if a religious organization should own an office building, a part of which is rented out, a part of which is used for its own purposes, the intent here is to allow the taxation of the income-producing part of that office building and exemption of the non-income producing part.<sup>5</sup>

Nearly two weeks later, Delegate Smith asked Committee Chair Nerland whether the exemption in sec. 4 would permit an exemption of any kind:

**Delegate Smith:** Mr. President . . . I have a question and that's in regard to the last sentence of this section where you say 'other exemptions of like or different kinds.' Isn't that, in effect, saying that exemptions of any kind may be granted.

**Delegate (Committee Chair) Nerland:** Yes, that was the purpose of it.<sup>6</sup>

Thus, the history behind art. IX, sec. 4, suggests that the delegates intended it to give the legislature broad power to enact tax exemptions.

---

<sup>4</sup> *Id.* at 1110.

<sup>5</sup> *Id.* at 1112.

<sup>6</sup> *Id.* at 2332.

Senator Robert Myers

January 16, 2024

Page 3

In conclusion, nothing in the plain text of the constitution or the minutes of the constitutional convention suggests that art. IX, sec. 4, should be interpreted to prohibit the legislature from expanding the nonprofit religious, charitable, cemetery, or educational property exemption as proposed by SB 167. Stated another way, art. IX, sec. 4, does not require the state (or a municipality) to tax property that that does not meet the "used exclusively for" requirement of the constitution.

ASD:mjt

24-015.mjt