

# 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

April 11, 2024

**SUBJECT:** Education tax credits  
(CSHB 89(FIN); Work Order No. 33-LS0518(U))

**TO:** Senator Forrest Dunbar  
Attn: Arielle Wiggin

**FROM:** Margret Bergerud   
Legislative Counsel

You asked if the provisions in CSHB 89(FIN) (HB 89), extending education tax credits to contributions for child care and for certain child care facilities, would violate art. VII, sec. 1 of the Alaska Constitution, which states in part, "No money shall be paid from public funds for the direct benefit of any religious or other private educational institution."

The changes HB 89 makes to the education tax credit program allows a corporate tax payer to deduct from their taxable income: expenditures made to operate a child care facility in the state for the benefit of the children of employees, contributions of cash or equipment to a child care facility in the state operated by a nonprofit corporation and attended by one or more children of the taxpayer's employees, and payments made to employees to offset in-state child care costs.

Although the question has never been raised in court, a child-care facility is likely not a "school" for purposes of the prohibition in the state constitution. A "child care facility" is defined as, "an establishment licensed as a child care facility under AS 47.32, including day care centers, family day care homes, and schools for preschool age children, that provides care for children not related by blood, marriage, or legal adoption to the owner, operator, or manager of the facility."<sup>1</sup> The subject of art. VII, sec. 1, of the state constitution is the public school system, which preschools are not a part of. Alaska does not have a public preschool system, and, as stated during the Constitutional Convention, this sections serves as a step "to maintain a free public education not encroached upon by any quarter."<sup>2</sup> Using the statutory construction rule of noscitur a sociis, "the meaning of a

---

<sup>1</sup> AS 47.24.095. Note that HB 89 amends this definition to remove "including day care centers, family day care homes, and schools for preschool age children." This does not change the analysis.

<sup>2</sup> *Minutes of the Constitutional Convention*, 1516 (Jan. 9, 1956).

word in a statute can be gleaned from the words associated with it."<sup>3</sup> Looking to the other types of institutions included in the definition, they are institutions created for the care of children, not the education of children like schools are. Further, these facilities are licensed by the Department of Family and Community Services, not the Department of Education and Early Development, and are not subject to requirements related to curriculum or learning outcomes. Further, preschool aged children, by definition, are not yet school-aged.<sup>4</sup> Because these facilities are not the types that compete with public schools, nor are they facilities primarily concerned with providing education, it seems likely that, if challenged, a court would not find that "child care facilities" as defined in AS 47.24.095 are "educational institutions" under art. VII, sec. 1 of the state constitution.

Although the question has not been presented to the Alaska Supreme Court, in 2011 the United States Supreme Court ruled that a tax credit is not a government expenditure despite having similar economic consequences.<sup>5</sup> That case involved tax credits given to individual Arizona tax payers who donated to organizations that gave scholarships to students to attend religious schools. The Court evaluated whether the plaintiffs had standing to challenge the tax credits and stated that the tax credits do "not extract and spend a conscientious dissenter's funds," nor force a citizen to contribute to anything.<sup>6</sup> The Court there explained that the tax credits do not collect and redistribute taxpayer money, and stated that the "contrary opinion—that all Arizonans benefiting from the tax credit are in effect paying their state income tax to STOs [the organizations distributing the scholarships]—assumes that all income is government property, even if it has not come into the tax collector's hands. That premise finds no basis in standing jurisprudence," and distinguished "cases involving tax benefits as opposed to governmental expenditures."<sup>7</sup> Citing to this decision, the Alaska Attorney General opined in 2014 that a court would likely find the use of the same tax credits that are expanded by

---

<sup>3</sup> *Dawson v. State*, 264 P.3d 851, 858, 2011 (Ct. of Appeals), citing *Smith v. State*, 229 P.3d 221, 227 n. 4 (Alaska App.2010); Garner, *Black's Law Dictionary* (Eighth ed. 2004), p. 1087.

<sup>4</sup> Alaska does not require education before the age of seven, *see* AS 14.30.010.

<sup>5</sup> *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125, at 142 (2011).

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

<sup>7</sup> *Id.*; *see also* *Mueller v. Allen*, 463 U.S. 388 (1983) (distinguishing a tax deduction for actual expenses paid to a parochial school from the "thinly disguised 'tax benefits,' actually amounting to tuition grants, to the parents of children attending private schools" that the court struck down in *Committee for Public Ed. And Religious Liberty v. Nyquist*, 413 U.S. 756 (1973) (finding unconstitutional an income tax deduction scheme because it had the effect of primarily advancing religion).

Senator Forrest Dunbar

April 11, 2024

Page 3

this bill or contributions to a private school constitutional.<sup>8</sup> Because the tax credits in the bill do not result in the distribution of public funds to religious or private educational institutions, they do not violate art. VII, sec. 1, of the Alaska Constitution.

Please reach out with further questions.

MAB:mis

24-192.mis

---

<sup>8</sup> 2014 Op. Alaska Att'y Gen. (May 6); 2014 WL 6465365.