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MEMORANDUM

April 11, 2024

SUBJECT: Child care grant program
(CSHB 89(FIN); Work Order No. 33-LS0518\S)

TO: Representative Julie Coulombe
Attn: Eleilia Preston

FROM: Margret Bergerud 
Legislative Counsel

You asked if payments made to child care facilities that are private or faith-based under the child care grant program and the day care assistance program 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."

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."¹ 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 section serves as a step "to maintain a free public education not encroached upon by any quarter."² Using the statutory construction rule of noscitur a sociis, "the meaning of a word in a statute can be gleaned from the words associated with it."³ 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

¹ 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.

² *Minutes of the Constitutional Convention*, 1516 (Jan. 9, 1956).

³ *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.

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Education and Early Development, and are not subject to requirements related to curriculum or learning outcomes. Preschool aged children also, by definition, are not yet school-aged.⁴ 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.

Please reach out with further questions.

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