

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

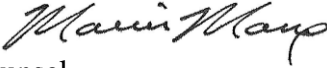
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 8, 2023

SUBJECT: Constitutional amendments: appropriation limit, Alaska permanent fund, constitutional budget reserve fund
(Work Order No. 33-LS0431)

TO: Representative Will Stapp
Attn: Bernard Aoto

FROM: Marie Marx 
Legislative Counsel

You asked a question related to a hypothetical constitutional amendment that includes changes to the Alaska permanent fund, the appropriation limit, and the constitutional budget reserve fund. Specifically, you asked whether these hypothetical changes would violate *Bess v. Ulmer*.¹ Because this memorandum is based on a hypothetical constitutional amendment, it should be considered informative, but not instructive as to whether an actual proposed amendment would pass muster.

While a resolution could be drafted that includes changes to the Alaska permanent fund, the appropriation limit, and the constitutional budget reserve fund, it is quite possible that a court would find that those changes, when combined, would constitute a revision, requiring a constitutional convention.

Alaska has one case distinguishing an amendment from a revision: *Bess v. Ulmer*.² In *Bess*, the court stated that among the framers of the state constitution "there was consensus that 'amendment' contemplated a simple change, whereas 'revision' would encompass broader and more comprehensive changes."³ As explained in *Bess*, amendments are changes that are "'few, simple, independent, and of comparatively small importance,'"⁴ that do not "'alter the basic governmental framework' of the Constitution."⁵

¹ 985 P.2d 979.

² *Id.*

³ *Id.* at 982.

⁴ *Id.* at 987 (quoting Judge John A. Jameson, *A Treatise on Constitutional Conventions; Their History, Powers, and Modes of Proceeding* §540 (Chicago, Callaghan and Company, 4th ed. 1887)).

In deciding whether a proposal is an amendment or revision, the court separately analyzes the quantitative and qualitative nature of the proposed constitutional changes, giving preference to neither analysis but instead considering how the two together affect the structure of the constitution and resulting government.⁶ The hypothetical resolution would likely amend at least three sections of the constitution. While this is not many sections, changes that place new and or restrictive limits on legislative appropriations have the effect of limiting the flexibility of the legislature. Because one of the fundamental powers of the legislature is the power of appropriation, the court may view those changes as significantly impactful.

There have been no Alaska Supreme Court decisions interpreting the revision and amendment distinction since *Bess*, so it is difficult to predict whether a court would find your hypothetical resolution an amendment or a revision. However, I do not recommend combining changes to the Alaska permanent fund, the appropriation limit, and the constitutional budget reserve fund into one amendment, because to do so would invite a *Bess* challenge. You could consider breaking the changes into separate amendments. However, be aware that depending on the level of the restriction the proposed appropriation limit places on the legislature's power of appropriation, the changes to the appropriation limit alone could result in the type of "sweeping change" the court has suggested may be a revision rather than an amendment.⁷

Please let me know if I may be of further assistance.

MYM:boo

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⁵ *Id.* at 988 (quoting *Brosnahan v. Brown*, 651 P.2d 274, 289 (Cal. 1982)).

⁶ *Id.* at 987.

⁷ *See id.* at 993.