SB

356

FILE 1

Alaska State Legislature

Senate

Official Business

Senator Edna DeVries, Chairman
Members:
Senator Ferguson, Vice Chairman
Senator Coghill
Senator Sturgulewski
Senator V. Fischer

Pouch V
Juneau, Alaska 99811

Committee on Community and Regional Affairs

February 25 Meeting of C&RA Committee

Matters for consideration:

1) Draft CS for SB 376 (added $50,000 for Bettles organization; and $45,857 for FY'85 water/sewer assessments)

2) Opposition to Local Boundary Commission decisions: Ltr from Shee Atika dtd 2/19/86; Ltrs from Ziegler, Cloudy, King & Peterson dtd 2/19/86 and 2/20/86.

3) SB 356 -- An Act relating to election campaign financing: efd

   The following informational material relating to SB 356 is attached:

   a) Feb 25'86 sectional analysis for State Affairs CS which was offered 2/24/86

   b) Feb 18'86 ltr from Gross/Burke on basic changes in present law as contained in draft bill which was introduced 1/22/86

   c) Jan 22'86 memorandum from AG to Sen Vic Fischer on APOC regulations

   d) State Affairs Committee minutes from bill hearings; March 1985 through February 1986

   e) Oct 28'85 ltr from APOC commenting on proposed bill revisions

   f) Oct 17'85 memorandum from APOC Staff to APOC on proposed revisions

   g) APOC comments on April 23'85 issue paper written by Gross/Burke

   h) April 23'85 Gross/Burke issue paper on campaign disclosure law

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Official Business

Re: Municipal League comments
SB 356

Scott ~~Ferguson~~ Burgess came by and said that the League has no specific comments on the legislation -- he has not received any from his membership --

in League's policy statement it urges the Legislature to review the campaign and financial disclosure laws and make the reporting requirements more effective.....the League also supports exempting elected or appointed service area advisory boards from campaign and financial disclosure requirements.

There is an error in new CS .... See page 45, line 27----definition of "municipal officer" -- SHOULD NOT INCLUDE CITY OR BOROUGH MANAGER, MEMBERS OF A CITY OR BOROUGH PLANNING OR ZONING COMMISSION...ETC ----because these officials are not elected.

Yvonne

wrong -

that section refers to conflict of interest
Title 39 -
Burke 3/7/86

PART VII
MUNICIPAL ELECTIONS

A. REGISTRATION

The League supports efforts to improve the processing and quality of the voter registration system.

B. DISCLOSURE RESTRICTIONS

1. Reporting Requirements: The League urges the Legislature to review the campaign and financial disclosure laws and make the reporting requirements more effective.

2. Service Area Advisory Boards: The League supports legislation that would exempt elected or appointed service area advisory boards from campaign and financial disclosure requirements.

C. VOTER QUALIFICATION

1. State Requirement: The League supports amendment to Title 29, Municipal Code, to require a municipal voter be registered to vote in state elections 30 days before the municipal election, or before signing a nominating initiative or recall petition.

2. Local Requirement: The League supports legislation that would allow a municipality, by ordinance, to require persons to be registered within the State of Alaska and the precinct district or service area in which they reside not less than thirty (30) days immediately preceding the date of the municipal election.

3. Reregistration: The League supports present legislation which requires a voter who has been purged from the voter registration list in accordance with AS 15.07.130, "Elimination of Excess Names", to reregister in accordance with AS 15.07.090, and supports deletion of AS 15.15.198, "Voters not on Official Registration List", which is in conflict with those statutes.

E. QUALIFICATION FOR ELECTIVE OFFICE

The League supports legislation that would include provisions in Title 29, the Municipal Code, and Title 14, the Education Code, for municipalities to set qualifications for all elected municipal officials including school board members.

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

(907) 586-2777

AVRUM M. GROSS
SUSAN A. BURKE

February 18, 1986

The Honorable Mitch Abood
Senate State Affairs Committee
Alaska State Legislature
Box V
Juneau, Alaska 99811

Dear Chairman Abood:

On February 19 the State Affairs Committee will have before it the culmination of nearly a year's effort directed at revising the Campaign Disclosure Laws of Alaska. The bill has received an enormous amount of public scrutiny and has been reviewed in depth by groups as diverse as NOW, the League of Women Voters, the APOC, the Department of Law and the various political parties of the state. The Committee itself has worked on the bill in countless committee meetings and public hearings.

The final version which is before you now is much less of a change in present law than originally proposed by the Committee consultants. As you know, we initially suggested that Alaska join the majority of states and remove limits on direct personal contributions to candidates, both as an incentive for disclosing contributions which are presently concealed in indirect giving and as a disincentive for the growth of PACs. Our proposal was rejected by the Committee in favor of raising the upper limits on contributions and the lower limit on disclosure of individual contributions simply to reflect the impact of inflation on existing limits which were adopted 12 years ago. Thus, the $1000 limit on individual contributions adopted in 1974 has been raised to $2000 -- an amount of roughly comparable value 12 years later. The $100 lower limit on disclosure adopted 12 years ago has been raised to $250 -- again roughly corresponding to the change in the value of money Neither of these changes are significant -- they merely bring the Act up to date. The raise of disclosure minimums to $250, for instance, was included in HB 165 which passed the legislature in 1983. While the bill was vetoed by the governor for other reasons, he specifically stated his "support" of the increase in his veto message of July 18, 1983. A failure to raise the contribution limits at all, of course, would mean that the amount that the legislature decided in 1974 was the maximum that people could contribute

would, as a result of inflation, be but a fraction of that originally intended.

There are a number of major changes in the act that have survived the extended process of debate. New restrictions have been imposed which limit the use of campaign funds to political purposes. Surplus campaign funds may not be taken for personal use but must be disposed of in accordance with the act. Campaign accounts must be closed as of the date successful candidates are sworn into office; fund raising may not continue for years as it does today with the obvious potential for abuse. These new provisions have gained nearly uniform support. Other provisions of the bill, however, have created a good deal of misunderstanding. As late as last Friday one newspaper reported that the Committee was "pulling the teeth" of some of Alaska's toughest campaign laws when it adopted some of the measures presently before it. For instance, the Committee has been charged with making candidates "less accountable" for actions of campaign workers by adopting provisions excusing a candidate from liability if he did not know his campaign workers were violating the law. But, in fact, the Committee has changed nothing -- this is the rule of present law, and it makes as much sense today as it did 12 years ago when it was adopted. The Committee has also been chastised for raising the personal contribution limit to $2000 and increasing the reporting threshold to $250; but as we have noted, these changes do nothing more than maintain the real value of contribution limits established 12 years ago which were subsequently eroded by inflation.

Another criticism leveled at the Committee is that it has replaced all current criminal violations with civil fines and raised the level of proof required to impose those fines from "a preponderance of evidence" to "clear and convincing" evidence. Initially, of course, the Committee provided that serious violations of the campaign laws would be prosecuted as felonies and that only minor and inadvertent violations would be subject to commission action. It was only when the Department of Law indicated that they had no interest in prosecuting campaign violations that responsibility for administering all penalty provisions under the act was placed in the APOC. That is a new commitment; under present law, every violation of the act is subject to criminal prosecution as a misdemeanor. Shifting enforcement of serious matters which formerly could have been prosecuted as crimes to the APOC requires a different standard of proof than has been used in the past. For violations resulting from inadvertent errors whereby a report is not filed or contains inaccuracies, proof is simple under any standard. The facts speak for themselves.

But proof of violations involving more than just inadvertent error is another matter. If the APOC claims that an act is deliberate and attempts to impose substantial fines on persons for allegedly attempting to deceive the public, we believe that the Commission must show the intent to mislead by clear and convincing proof; a preponderance of evidence is simply too minimal a standard to justify the imposition of substantial penalties. Fines of more than $25,000 which may be imposed for deliberate violation of the Act are comparable to fines for major felonies; moreover, a conclusion by APOC that a violation involves an "intent to deceive" can have major implications on someone's life -- much less their political career. The standard of proof should be high.

All in all, we believe the bill now before the Committee is a good bill. It simplifies the present Act by reorganizing it and by eliminating unconstitutional or unworkable provisions. Individual contribution limits are brought up to date with inflationary trends. The bill imposes for the first time limits on donations to PACs and aggregate limits on donations from PACs. The bill protects the rights of persons who may face commission action by insuring privacy in any investigation and fairness in any subsequent proceeding. Penalties are increased over present law for intentional violations of the act; at the same time, fines are limited in the case of inadvertent mistakes. New provisions prohibiting use of campaign funds for personal use and personal appropriation of surplus funds are added.

These are some of the major features of the bill. There are, of course, many more which have been discussed previously with the Committee. They need not be repeated here. The basic purpose of this letter is simply to state that with the multitude of changes that have taken place, we both feel that the bill is a good one, and we hope it merits Committee and subsequent legislative approval. We also want to add our thanks to you and to all the members of the Committee for allowing us the opportunity to work with you on this subject.

Yours very truly,

Avrum M. Gross

Susan A. Burke

JAN 23 RECD

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ 1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ 1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☒ POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 22, 1986

file APOC

M E M O R A N D U M

TO: Honorable Vic Fischer
Alaska State Senate
Alaska State Legislature

FROM: Harold M. Brown
Attorney General

BY: Richard D. Monkman
Assistant Attorney General

RE: APOC Regulations
A.G. File: 399-132-85

Attached at your request is a complete copy of the regulations of the Alaska Public Offices Commission. The recent amendments are included in this copy.

As we discussed, this office very carefully reviewed and edited the recent amendments before they were filed with the Lieutenant Governor. We gave these amendments an especially careful review because of the sensitive nature of any regulation of political expression. In our review, we paid close attention to both First Amendment issues and to the statutory authority of the Commission. We are confident that the final amendments were well within Constitutional and statutory bounds.

The amendments involve both legislative and interpretive sections. As you know, interpretive regulations are intended to clarify statutory law, and to provide guidelines to inform the public as to how an agency interprets the law it is enforcing. Legislative regulations, by contrast, establish substantive law. See, Drafting Manual for Administrative Regulations, at 19-21 (9th Ed.; July, 1985). The legislative sections of these amendments do not seem to be controversial. They include, for example, requiring campaigns to keep funds in a separate bank account (2 AAC 50.319), setting out a procedure for advisory opinions from the Commission (2 AAC 50.905), and bringing the Commission's hearing procedures into conformity with the Administrative Procedures Act (2 AAC 50.470).

The interpretative amendments have been getting the most attention. It should be stressed that the interpretive

regulations do not make law, rather, they provide notice as to how the Commission interprets existing statutes. The main amendments of interest are:

1. Contributions [2 AAC 50.313]. Various provisions already in the regulations were reorganized, with some additions, to better define what are reportable contributions under the statute. The Commission addressed questions of interpretation which have come up repeatedly. Reportable contributions include loans [2 AAC 50.313(b)]; non-monetary contributions, including "contributions" of opinion poll data [2 AAC 50.313(d)]; and expenditures made in cooperation with a candidate or the candidate's agent [2 AAC 50.313(j)]. The Commission excluded non-monetary contributions of value less than $50, voluntary payments of one's own travel expenses, and general "get out and vote" messages from the list of reportable contributions [2 AAC 50.313(l)].

2. Contributions in the Name of Another [2 AAC 50.357]. The law prohibits contribution in fictitious names, anonymous contributions, and "contributions made in the name of another." AS 15.13.070(d). The Commission has interpreted this ban to include contributions made by subsidiary corporations [2 AAC 50.357(c)]. As you may know, this has been a continuing problem for the Commission and the public. Individuals controlling a variety of corporations, often just "shells," have made multiple contributions to candidates. The contribution limitation is meaningless when an individual is able to make multiple contributions anonymously, through different corporate entities. Also, the purpose of the disclosure laws, to identify the source of contributions, is completely evaded.

3. Personal Contributions [2 AAC 50.316]. The First Amendment allows individuals to spend unlimited amounts of their own funds when seeking election. This regulation explains the Commission's interpretation of the personal contribution exception to the contribution limits. Of particular note, this regulation clarifies that personal loans to a candidate, made by financial institutions on the usual terms, are considered personal contributions and are not subject to the $1,000 limit.

I think a dispassionate reading of the APOC regulations will show that they are neither as complex nor as confusing as Mr. Gross has portrayed them. The early drafts needed work, and considerable effort went into improving them. The final version should be clear enough to both candidates and campaign treasurers.

If I or the APOC staff can be on any further assistance in any way in this matter, please let me know.

HMB:RDM:cck

Attachment: APOC Regulations

cc: Honorable Katie Hurley
Chairman, House State Affairs
Alaska State Legislature

Peter Froehlich
Assistant Regulations Attorney
Department of Law

Theda S. Pittman, Executive Director
Alaska Public Offices Commission
Anchorage

ALASKA PUBLIC OFFICES COMMISSION

Administrative Regulations

AS 15.13 - Campaign Disclosure,

Complaints and Hearings, General Provisions

January 4, 1986

2 AAC 50.310. FILING. (a) All reports that are required to be filed under the provisions of AS 15.13 and this chapter must be received by the commission on or before the due date. Except for the 24 Hour Report, "received" means either

(1) hand-carried to the commission's central office or its branch office in the state capital; or

(2) postmarked. The date shown by the postmark is presumed to be the date it was deposited in the United States mail.

(b) The 24 Hour Report required by AS 15.13. 110(b) must be filed with the commission's central office either by a collect telegram or by actual physical delivery within the prescribed time. 24 hour Reports may not be mailed.

(c) All forms will be available at the commission's central and branch offices, at district offices during state election years, and at the participating municipalities. (Eff. 5/14/80, Register 74)

Authority: AS 15.13.020(j) and (k); AS 15.13.030(10)
AS 15.13.110(a) and (b)

2 AAC 50.313. DEFINITION OF "CONTRIBUTION." (a) In 2 AAC 50.310 — 2 AAC 50.405, except as otherwise provided in this section, "contribution" includes a payment, gift, subscription, loan, advance, transfer, deposit of money, services, or anything of value made by a person or group for the purpose of influencing an election for state or municipal office or influencing the passage or defeat of a ballot proposition or question; and includes a personal contribution as described in 2 AAC 50.316.

(b) In this section and in 2 AAC 50.321, "loan" includes a guarantee, endorsement, and any other form of security. The following apply to loans:

(1) A loan that exceeds the contribution limitations of AS 15.13.070 is unlawful, whether or not it is repaid.

(2) A loan is a contribution at the time it is made.

(3) Except for a personal contribution loan as described in 2 AAC 50.316(d), a loan is a contribution by each endorser or guarantor. Each endorser or guarantor is considered to have contributed that portion of the total amount for which he or she agreed to be liable in a written agreement. If the agreement does not state the portion of the loan for which each endorser or guarantor is liable, the loan is considered a loan by each endorser or guarantor in the same proportion that each endorser or guarantor bears to the total number of endorsers or guarantors.

(c) In this section, "money" includes currency of the United States or of any foreign nation, checks, money orders, or any negotiable instruments payable on demand.

(d) In this section, "anything of value" includes facilities, equipment, polling information, supplies, advertising services, membership lists, mailing lists, any item of real or personal property, and personal services of any kind, the cost or consideration for which is paid by a person other than the candidate or group for whom the services are rendered.

(e) The provision of goods or services without charge, or at a charge which is less than the usual and normal charge for the goods and services in the market, is a contribution. If goods or services are provided at less than the usual or normal charge in the market, the amount of the nonmonetary contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged.

(f) The entire amount paid to attend or participate in a fundraiser or other political event, and the entire amount paid as the purchase price for a fundraising item sold by a group or candidate, is a contribution.

(g) The payment by a person of compensation for the personal services of another person to a group or candidate for any purpose, except for legal and accounting services necessary to complete reports, is a contribution. No contribution results in the following circumstances:

(1) when an employee paid on an hourly or salaried basis engages in political activity during what would otherwise be a regular work period, if the time spent is made up by the employee within a reasonable period of time;

(2) when an employee paid on a commission or piecework basis, or an employee paid only for work actually performed whose time is considered the employee's own, engages in political activity during normal working hours;

(3) if time used by the employee during normal working hours to engage in political activity is bona fide vacation or other earned leave time.

(h) The extension of credit by a person to a candidate or political group for a length of time beyond normal business practice is a contribution, unless the creditor has made a commercially reasonable attempt to collect the debt, or pursued its remedies in a manner similar in intensity to that employed by the creditor in pursuit of a non-political debtor, including lawsuits if filed in similar circumstances.

(i) A debt owed by a political group or candidate, which is forgiven or settled for less than the amount owed is a contribution. The commission will, in its discretion, consider the following factors before directing staff to commence a preliminary investigation:

(1) whether, at the time the debt was incurred, both the creditor and the candidate or political group expected full repayment within a reasonable period of time;

(2) whether the campaign has made a good faith effort to repay all outstanding debts;

(3) whether the creditor has taken steps it normally takes against debtors in the same financial condition as the campaign;

(4) whether the proposed settlement agreement between the creditor and the campaign is similar to previous settlements made by the creditor and other debtors;

(5) whether the campaign has treated equally all creditors since it became aware of the difficulty in repaying all debts;

(6) whether the proposed settlement agreement is similar to others proposed by the campaign.

(j) An expenditure made by a person in cooperation, consultation, or in concert with, or at the request or suggestion of a candidate, the candidate's campaign committee, campaign agents. or campaign consultants is a contribution to the candidate. The financing by a person of the issuance, republication, or distribution of a broadcast or of a written, graphic, or other form of campaign material provided by the candidate, the candidate's campaign committee, campaign agents, or campaign consultants is a contribution to the candidate. This includes an expenditure:

(1) based on information about the candidate's plans, projects, or needs provided by the candidate or the candidate's campaign agents;

(2) made by or through a person who is, or has been, authorized to raise or expend money for the candidate, who is, or has been, an agent of a candidate's campaign, or who has received any form of compensation or reimbursement from the candidate, members of the candidate's campaign committee, campaign agents, or campaign consultants;

(3) made by any person or group based on data from a candidate's pollster or campaign consultant or any other person who has received, or is receiving, compensation or reimbursement from the campaign;

(4) made by a political group for soliciting contributions to be paid or delivered directly to a candidate or the candidate's campaign agents.

(k) In (j) of this section, "campaign agents" includes all officers, campaign managers, treasurers, deputy treasurers, campaign consultants, and persons who reasonably appear to have authority to make expenditures and solicit contributions for a candidate's campaign.

(l) In 2 AAC 50.310 — 2 AAC 50.405, "contribution" does not include the following payments, services, or other things of value:

(1) costs incurred in covering or carrying a news story by a broadcasting station, newspaper, or periodical of regular publication, unless the

(2) prior history as a political group under AS 15.13.050 including the receipt of substantial contributions and the disbursement of substantial expenditures made for the purpose of influencing the election of legislative candidates in more than one district; and

(3) the percentage of votes received by a statewide candidate nominated in the name of the group in the preceding general election.

(d) Groups satisfying the criteria of (a) of this section and groups granted exemptions under (b) of this section are subject to the requirement that political parties report contributions and expenditures as provided by AS 15.13. (Eff. 6/29/84; Register 90; am 1/4/86, Register 97)

Authority: AS 15.13.030(10) AS 15.13.070
AS 15.13.040

2 AAC 50.316. PERSONAL CONTRIBUTIONS BY A CANDIDATE. (a) A candidate may make unlimited personal contributions from assets which, under Alaska law, the candidate had legal right of access to or control over and to which the candidate had legal and rightful title at the time he or she became a candidate. These assets include salary and other earned income from bona fide employment; dividends; proceeds from the sale of investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy; and gifts of a personal nature which had been customarily received before candidacy.

(b) A candidate may use a portion of jointly owned assets as a personal contribution. The portion of the jointly owned assets that may be used is the candidate's share under the instruments of conveyance or ownership. With respect to spouses, if no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used is considered the personal funds of the candidate. In the case of property jointly owned by a non-spouse, if there is no instrument of conveyance or ownership, the portion of the asset belonging to the candidate is the pro rata share of the purchase price paid by the candidate, or, if no purchase was made, the amount determined by dividing the present value by the number of owners.

(c) A candidate's donation of goods remaining from a prior campaign is a personal contribution.

(d) A loan of money by a regulated banking institution to a candidate is a personal contribution if the loan is made in accordance with applicable banking laws and regulations; bears the usual and customary interest rate for the category of the loan involved; is evidenced by a written instrument; and is subject to a due date or amortization schedule. Loans under this section are reported as a candidate's personal contribution.

(e) The absolute sale of all legal and equitable interest of a candidate's real or personal property is not a contribution from the purchasers if the proceeds are received by a candidate in a legitimate arm's length transaction documented in writing. Sale proceeds used by a candidate in a campaign must be reported as personal contributions. (Eff. 1/4/86, Register 97)

Authority: AS 15.13.030(10) AS 15.13.070
AS 15.13.040 AS 15.13.130

2 AAC 50.319. DESIGNATED CAMPAIGN DEPOSITORY. (a) Each candidate and political group intending to raise or spend more than $5,000 in a calendar year shall designate on a registration statement or on the first campaign disclosure statement filed with the commission, one or more regulated banking institutions as its campaign depository or depositories. Each account title must indicate that it is a campaign account.

(b) All monetary contributions to, and expenditures by, a candidate or political group must be deposited to or made from a designated campaign depository.

(c) A candidate or political group required by (a) of this section, to designate a campaign depository may obtain and use credit cards in making travel-related campaign expenditures for transportation, lodging, meals, and other expenses in connection with traveling for campaign purposes. The credit card account name must indicate that it is a campaign account.

(d) Contributions that appear to be illegal must, within ten days after receipt, be returned to the contributor.

(e) A campaign treasurer shall make his or her best efforts to determine the legality of a contribution. If a contribution cannot be determined to be legal, a refund must be made within a reasonable time, and the treasurer shall note the refund by amending the current report or noting the change on the next required report. Alternatively, the contribution may be deposited into the campaign depository and reported. If it is deposited, the treasurer shall make and retain a written record noting the basis for the appearance of illegality. A statement noting that the legality of the contribution is in question must be included in the next required report. (Eff 1/4/86, Register 97)

Authority: AS 15.13.030 AS 15.13.060
AS 15.13.050 AS 15.13.070

2 AAC 50.320. GENERAL RECORDKEEPING REQUIREMENTS FOR CANDIDATES AND GROUPS. (a) Every candidate and group required to report contributions or expenditures under the provisions of AS 15.13 shall maintain detailed records of all contributions received and expenditures made in accordance with the uniform methods of bookkeeping set out in the commission's bookkeeping guide.

a copy of the communication in order to enable the commission to verify which communications were sponsored by that person. (Eff. 5/14/80, Register 74; am 6/29/84, Register 90)

Authority: AS 15.13.030(10) AS 15.13.090
AS 15.13.040

2 AAC 50.355. LOANS. Repealed 1/4/86.

2 AAC 50.357. CONTRIBUTIONS IN THE NAME OF ANOTHER. (a) No contribution may be made, directly or indirectly, by a person other than in the legal name of the original source of the contribution.

(b) No person, employer, principal, supervisor, or contractor may lend, pay, advance, or reimburse employees, agents, or other persons for contributions to a candidate or group in the employee's, agent's, or other person's name, or in a name other than the original source of the contribution.

(c) A contribution made at the direction of another person, including a parent organization, subsidiary, division, department, branch, or local unit, is a contribution in the name of another. Contributions by two or more organizations to the same recipient are in the name of another if the organizations

(1) share the majority of members of their board of directors;

(2) share two or more corporate or organizational officers;

(3) are owned or controlled by the same shareholders or members;

(4) are in a parent-subsidiary relationship.

(d) If a minor makes a contribution of money or any thing of value given to the child by a parent for that purpose, the parent has made a contribution in the name of another. (Eff. 1/4/86, Register 97)

Authority: AS 15.13.030(10) AS 15.13.070
AS 15.13.040 AS 15.13.130

2 AAC 50.360. MUNICIPALITIES. (a) If a municipality seeks to influence the outcome of an election, using budgeted municipal funds, it shall report as an individual under AS 15.13.040(d) and (e).

(b) All communications which are paid for by a municipality and which are related to an election are considered to be intended to influence the outcome of an election unless they are only notices of the election or unless they are required by statute, charter, or ordinance.

(d) Any candidate or group wishing to disburse the surplus balance in a campaign account in a manner not described in (b) or (c) of this section may request commission review and approval of the manner in which he or it wishes to disburse the surplus. (Eff. 7/22/78, Register 67; am 10/18/81, Register 80)

Authority: AS 15.13.030(10)

2 AAC 50.401. POST-ELECTION FUNDRAISING BY CANDIDATES AND CONTROLLED GROUPS. (a) A candidate or a candidate's controlled group may make post-election expenditures for the purpose of raising money to discharge a debt from a prior campaign, in accordance with (c) of this section.

(b) Absent a debt arising from a prior campaign, a candidate may not spend money for the purpose of seeking public office unless the individual is in compliance with AS 15.13.100, the early campaigning provisions of 2 AAC 50.380, or an advisory opinion issued under (c) of this section and 2 AAC 50.905.

(c) A candidate who is in debt from a prior campaign and who has not complied with either AS 15.13.100 or 2 AAC 50.380 by December 31st of the year after the election, shall request an advisory opinion under 2 AAC 50.905 concerning the applicability of AS 15.13.100 to further expenditures to pay off the debt. Absent an advisory opinion request, the commission staff may commence a preliminary investigation to review the applicability of AS 15.13.100 to expenditures by the candidate.

(d) A debt arising from a prior campaign includes

(1) a candidate's personal contributions made before the date of the prior election;

(2) campaign debts to others that were reported on a 10 day post-election campaign disclosure statement;

(3) post-election expenditures made for the purpose of discharging a debt arising from a prior campaign; and

(4) the costs reasonably associated with winding up the affairs of the prior campaign, including social events held immediately after the election for the benefit of campaign workers or volunteers, communications of acknowledgement, and legal and accounting fees reasonably incurred to comply with AS 15.13 and 2 AAC 50.310 — 2 AAC 50.405. (Eff. 1/4/86, Register 97)

Authority: AS 15.13.030(10) AS 15.13.070 AS 15.13.110
AS 15.13.040 AS 15.13.100 AS 15.13.130

2 AAC 50.405. DEFINITIONS For 2 AAC 50.310 — 2 AAC 50.405 and AS 15.13. In 2 AAC 50.310 — 2 AAC 50.405 and in AS 15.13

STATE OF ALASKA

ALASKA PUBLIC OFFICES COMMISSION

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☑ 610 C STREET, SUITE 211
ANCHORAGE, ALASKA 99501-3598
(907) 276-4176

☐ JUNEAU BRANCH OFFICE
POUCH CO
JUNEAU, ALASKA 99811-0222
(907) 465-4864

October 28, 1985

The Honorable Mitch Abood, Chair
Senate State Affairs
1024 W. 6th Avenue
Anchorage, Alaska 99501

Dear Senator Abood & Members of the Committee:

The Commission is highly supportive of your efforts to undertake a comprehensive revision of AS 15.13, Alaska's Campaign Disclosure Law. This statute has had no substantive amendments in almost ten years despite the creative changes which campaigns have undergone and despite the enforcement difficulties experienced by the Commission.

The draft before you is a good beginning because it is a comprehensive effort to address most of the major problem areas. The members of the Alaska Public Offices Commission have discussed the draft and we wish to encourage you to continue your work.

We consider the most positive aspects of the draft to be in the sections which clarify the registration requirements of candidates, specify the use of campaign funds, the termination of accounts, the disposal of surplus funds, and the solicitation of contributions. We also think the sections on campaign financing misconduct are promising but need more work as do the definitions, the time limitations and the restrictions on Commission requests for a special prosecutor. In addition, there are two major areas of concern to the Commission not adequately addressed by the draft: registration and termination by groups; and the use of Games of Chance and Skill for campaign fund-raising.

It seems likely that most of the public feedback you receive will address the broad policy issues of contribution limits, allowable duration of campaigns, and candidate recovery of personal funds. The Commission is interested in those same public policy issues but we must additionally address your proposals with an eye toward their enforceability. The purposes of even the best draft can be defeated by administrative procedures that overburden a small staff and confuse the citizen who is trying to comply.

Based on comments that we have received individually, we believe that some aspects of the draft before you will elicit controversial testimony. As Commissioners we can emphathize with the difficulty you face in resolving strongly felt advice from diverse sources. We encourage you to persevere in both policy

and procedural changes because this law is long overdue for constructive amendments. Although the Commission cannot recommend adoption of the draft in its present form, we hope to see a subsequent draft that we can endorse without reservation. To that end, our staff has been directed to offer your drafters all possible assistance.

With respect to the major changes proposed, the Commission offers the following observations:

1. Elimination of the $1,000 contribution limit for individuals or persons giving directly to candidates. At present there is no member of the Commission who can support this proposal as written. It is unlikely to do anything to cap the rising costs of campaigns. While it would make life easier for our staff, for campaigns, and for those selected contributors who are breaking the present law, we do not believe it would eradicate anonymous contributions, fictitious contributions or those made in the name of another. There will always be some contributors who do not wish the extent of their donations to be identified.

While it is true that 27 states do not limit the amount of campaign contributions to candidates, there are only 15 of those 27 which allow both individuals and entities to give. In the remaining 12 states, certain types of contributors, such as corporations, banks, unions, insurance companies, and other regulated industries, are prohibited entirely. If the draft is intended to promote disclosure of the real sources of campaign funds and to discourage the increased cost of campaigns, then we feel it must look to solutions other than allowing individuals and non-corporeal persons to give unlimited amounts.

Although the amounts may vary, there are 23 states which limit the amount of a contribution apparently in support of the policy that candidates should obtain their financial support from a wide base of contributors each making donations within an appropriate limit. In recent years the Commission has supported an increase in the existing $1,000 limit to $2,000. Several of us continue to feel that such would be desirable simply because of the effects of inflation on the value of an individual contribution, but we cannot support abolishing any limit whatsoever on contributions by such a broad range of contributors.

The continuation of a limit on the amount PACs can give to candidates and the new limit on the amount PACs can receive are useful provisions and should be retained in succeeding drafts.

2. Requiring candidates to terminate their campaigns. In our opinion, this proposal would do much to help curb increased costs. The inclusion of restrictions on surplus disposal should also be helpful. Our records over the years demonstrate that a losing candidate finds it very difficult to pay off a large deficit. Although people may be more willing to contribute to winners after the election, even winners find that post-election fund-raising is no fun. From our perspective, the best aspect of these new proposals for ending campaigns is that they clearly establish that the individual candidate is responsible for his or her campaign debts. If the candidate unwisely runs up a large deficit, this law will leave the candidate personally responsible - which to our mind is the only appropriate outcome.

3. Reporting Due Dates for Contributions and Expenditures. The proposal to raise the threshold for disclosure of contributor names from more than $100 to $250 has been supported by the Commission in the past. Our reason was almost exclusively based on a willingness to ease the treasurer's burden and because we believe the purpose of disclosure is to give the voters access to significant information about campaigns. (We do not believe contributor schedules are required for the purpose of assisting every grass roots lobbying organization that wants to build a mailing list.) Frankly, recent events have caused some of us to reconsider whether the increased threshold is appropriate.

In addition, those of us who would like to continue supporting the "$250 or more" proposal find it difficult to do so in the situation at hand, wherein no expenditure information is filed until after the election. In our judgment the current proposal goes far beyond what is necessary or practical in the way of easing the reporting burdens. It offers a reporting schedule more likely to confuse people than assist them. There are many experienced, conscientious campaign treasurers in the state. We think that when you talk to them about content and timing of reports you'll find confirmation that what appears to be simple on the surface may create some real problems in practice.

In closing, we would like to reiterate that the Commission encourages you to continue work on this legislation. We support proposals that will ease reporting burdens while preserving adequate disclosure. We also support concepts that will slow down the growth rate of campaign costs. And, finally, we ask for your help in obtaining administrative procedures that will help us enforce the Law effectively.

Thank you for this opportunity to comment and for the commitment you have made to improving this Law. We look forward to hearing the public testimony you receive and to assisting in your work on the final draft.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

Jean Rogers/hp

Jean Rogers, Chairman
Arlayne Knox, Vice-Chair
Mildred Opland
Daniel Patrick O'Tierney
Burke Riley

MEMORANDUM State of Alaska

TO: APOC Members

DATE: October 17, 1985

TELEPHONE NO: 276-4176

FROM: Theda S. Pittman
Executive Director
Chris Johansen
Associate Coordinator

SUBJECT: Campaign Disclosure
Revisions - 9/19/85 Draft
of AS 15.14.

The September 19 Work Draft by Gross & Burke as well as a Sectional Analysis of the same date were sent to you immediately following the Senate State Affairs Committee meeting. The following remarks represent staff's follow-up on technical/administrative provisions and includes notations concerning changes the Committee recommended. By copy of this memo, Ms. Kennedy and Mr. Monkman are requested to provide any observations they deem appropriate. Major policy issues such as abolition of the $1,000 limitation are not discussed in this paper. The Committee has scheduled a public hearing on the next draft October 29. Within the next few days, we will poll you by telephone to see whether it is your desire to offer a Commission position on the policy questions at the October 29th hearing. A courtesy copy of this memo is being provided to Mr. Gross and Ms. Burke in the event that some of the technical information may be helpful.

Before proceeding with a sectional discussion, we note that Mr. Gross has described the two major purposes of this effort as to provide adequate disclosure and permit unlimited contributions (rather than through a proliferation of groups) to candidates. Campaign Disclosure touches upon the fundamental rights of expression and association. As you may recall from the COGEL meeting in Seattle, Charles Steele, General Counsel of the FEC, stressed the value of a clearly-worded "Findings and Purpose" section, especially in statutes touching upon the free exercise of fundamental rights. With respect to the two purposes articulated, it is questionable whether the draft provides better disclosure. A substantial portion of that question may be the result of confusion in the sections on independent expenditure reports which will be discussed later. It is clear that the proposal, in an apparent effort to alleviate some of the present burden on candidates and groups, provides less disclosure prior to an election. It is less clear whether allowing corporations, organizations and individuals to make unlimited contributions to candidates will have much effect on the growth of groups. With the exception of the political parties, many groups are created to give a particular interest a unique identity in the candidates' perception, e.g., the insurance industry. That purpose may continue to be a viable reason to give money to a group even if one can give an unlimited amount to a candidate directly.

ARTICLE I

ALASKA PUBLIC OFFICES COMMISSION

AS 15.14.010 - Applicability

(a) - The Committee agreed that language such as "every election for state office" should be included to reflect the possible creation of new elective offices on the state level (i.e., Attorney General). In addition, the language about municipal elections is to be made more specific to delete applicability to service area candidates. Although the present regulatory exemption for those making no expenditures [2 AAC 50.332(b)] works quite well, the universal tendency of service area candidates to spend almost nothing suggests that a statutory exemption would not deprive the public of information.

(b) - If the Committee is in agreement with Ms. Kennedy that contributions or expenditures made solely for petition costs to establish a ballot issue are not reportable, it would be helpful to include such a statement in this subsection. An additional question which might be clarified here is whether activity by the State or the University is reportable. See Attorney General's Opinion J-66-365-78, dated January 5, 1978, copy enclosed.

AS 15.14.020 - Alaska Public Offices Commission

(d) - The specific "February 1" to determine beginning and end of a Commissioner's term has been deleted. Its presence is useful in preserving the specific 5-year terms despite occasional slippage in prompt appointments, i.e., a late appointment does not change the effective date of the term.

(e)(3) - The Committee deleted the provision allowing Commissioners to donate to Presidential campaigns.

(f) - The Committee reduced the honorarium from $200 a day to $100 a day, a figure which is still an improvement over the present $50 a day. Mr. Gross cites Billy Berrier of Legislative Affairs as his source that the average commission honorarium is $200 a day.

(g) - The Committee suggested changing the quorum requirement from three to four so that two votes would not be sufficient to decide a matter. Your bylaws already require three votes to carry a measure. Since the present quorum requirement is three, you can hold a meeting with three Commissioners, but they must be in unanimity to take action. The effect of changing the quorum requirement in the statute would be to prohibit any meeting unless four of you could attend. This would prohibit you from appointing a three member subcommittee to hear a particular matter. During bad weather, travel problems might disrupt a whole meeting if more than one of you could not attend. If the Committee could be so persuaded, it would be wise to leave the quorum at three for that rare occasion when only three of you could attend.

(i) & (j) - These subsections which deal with regional or district offices, where reports may be filed, and where forms and copies are available have been redrafted to come somewhat closer to practicality and actual procedure. The language still causes considerable confusion among those who aren't familiar

with our actual procedures. At the request of the Committee, we have tried to suggest some further changes:

(i) - All state reports shall be filed directly with one of the Commission's offices. In major population areas where the Commission has no office, regional offices shall be established to maintain copies of reports filed by statewide candidates and by Legislative candidates in that region. Regional offices will also supply forms and pertinent materials supplied by the Commission to candidates, groups, and persons required to file reports under this chapter.

(j) - In municipalities subject to this chapter where the Commission has no office, the Commission will supply the municipal clerk with forms and pertinent materials for candidates, groups, and persons required to file reports of activity in the elections of that municipality. In municipalities where the Commission has no office, municipal reports shall be filed with the municipal clerk who shall insure that copies are made available for public inspection and that the originals are forwarded to the Commission promptly.

AS 15.14.030 - Duties of the Commission

The body of section .030 incorporates present law except for a minor modification in the language which provides that, within 60 days of an election, a list of all persons and political groups who have failed to comply with the law be made available to the public instead of sent to the Attorney General. The language needs additional modification to reflect what can actually be done. The literal meaning of the existing language would require staff to list and allege, within 60 days of an election, each and every possible campaign disclosure violation against candidates, groups, individuals, corporations, etc. More realistically, a list can be compiled of candidates and registered groups which have failed to file reports or have filed delinquent reports.

Although times and circumstances can always change, the Attorney General's report is more of an internal document for our purposes than of any use by the Attorney General. We have prepared this report for a number of years and consider it to be a public document. It is unclear whether the Attorney General has ever found it to be useful. However, the document could be of use to the public and that may be sufficient justification for retaining some form of the provision.

ARTICLE 2

REGISTRATION AND REPORTS

AS 15.14.040 - Registration by Candidates

(a) - This provision, coupled with the new definition of candidate, requires an individual who has not filed a declaration to register with the Commission and abide by the requirements of the law. Two suggestions come to mind: use the word "individual" rather than "person" since only individuals can become candidates and insert "in the aggregate" after "more than $1,000".

(b) - The draft is somewhat more restrictive than the Commission's proposed regulation in that those who have not filed must indicate whether they are seeking legislative, statewide or municipal office. For administrative purposes, the designation of state or municipal may be sufficient. Potential opponents may be more interested in the difference between "legislative" and "statewide" and we wonder whether it wouldn't be better to avoid fruitless hassles over whether someone hedged when they indicated the level of state race for which they might file.

(c) - A new subsection should be added specifying that the registration shall include required information about campaign officers as provided in AS 15.14.170.

AS 15.14.050 - Registration by Political Groups

(a) & (b) - These subsections are much like the present law in requiring a group to register prior to making a contribution to a candidate. The draft adds the making of an independent expenditure as a trigger for registration, but not ballot proposition expenditures which the Commisison has added by regulation. 2 AAC 50.342.

Noticeably lacking in both AS 15.13 and AS 15.14 is detail about the required contents of a registration statement or any requirement to re-register annually. Content requirements might be handled by a cross-reference to AS 15.14.170. Annual registration would assure accurate information about officers and assist in determining the applicability of Political Contribution Credits in a given year to a given group. Failure to re-register should invoke civil penalties because effective reporting enforcement is dependent upon accurate registration information.

Public awareness of groups could also be enhanced by requiring groups to specify "type" (e.g., official party subdivision, corporate PAC, labor PAC, etc.) or affiliation, and to include as part of the registered name the name of any sponsoring organization. At present staff uses the following categories for its annual summary of group activity: Ad Hoc, controlled, corporate, municipal entity, political party, special interest, trade association, and Union. FPPC bulletin, October 1, 1985, enclosed.

(b) - Continues the present reference only to state initiative groups, without mention of their municipal counterparts. See also the question raised under applicability.

(c) - Contains provisions related to the VECO litigation. The Committee suggested a re-drafting effort. The FEC addresses this type of provision in 2 CFR 110.6.

A question not clear in subsection (c) is what actions a "conduit" can take in the normal course of business in passing on an earmarked contribution without running afoul of the general prohibitions against making a fictitious contribution or one in the name of another. AS 15.14.160; 15.13.070(d). It seems natural and logical that one element (but not the only element) of these crimes is an act of nondisclosure to the recipient candidate or group. See

Abood v. Flood, Staff Memorandum, dated August 16, 1985, not considered by the Commission as of yet. (enclosed). Payroll deduction checks are usually issued by the "conduit," but the recipient candidates or political groups often follow the check masthead rule and do not record or report the contribution as received from the original member or employee. This custom raises the appearance the original source was intentionally, knowingly, or inadvertantly undisclosed. It not only causes confusion on the Campaign Disclosure Statements, but confusion with the Political Contribution Credit as well. A requirement that conduits report in writing to the recipients that the check is a payroll withholding or other earmarked contribution, file some special report with the Commission, or provide recipients with a copy of the payroll authorization form might be in order.

AS 15.14.060 - Reports by Candidates of Contributions and Loans Received

This section begins the unusual split reporting system for candidates. Candidates make pre-election disclosure of "contributions" and post-election disclosure of "expenditures." In our review of other states, we have not seen a bifurcated reporting system (although we will continue to look) and we look forward to discussion which may emerge at the October 29 hearing.

The requirement to identify "occupations and employers" was omitted in the draft and a restoration requested by the Committee. Federal law [11 CFR 104.8(a)] and all of the states with these type of laws require this information. Contributor names without identifying information simply don't represent significant disclosure.

Subsection .060(a) requires reporting of contributions received by a candidate. "Received" contributions are reportable when they are "accepted." Subsection (b) provides that acceptance occurs when the contributions are used for campaign purposes or retained at the end of the reporting period.

We see no substantial problems with adopting a special acceptance rule for candidates for the 30 Day, 7 Day, and Final Reports; however, substantial non-disclosure could occur if the "acceptance rule" is applied during the 24 Hour Reporting period. We can speculate a candidate could receive a contribution at the beginning of the 24 Hour reporting period, hold on to it until the end, and then report it on election day when it is too late for anyone to have meaningful access to the information. Under present law, acceptance comes when the candidate, treasurer, or deputy treasurer has possession of the contribution, and we think the Commission's rule is in conformity with a large number of states and the FEC. See 2 CFR 102.8. It may be possible to use a special "possession rule" for the 24 Hour contributions and preserve the policy of section (b) for other contributions.

The allowance of 30 days after a report is due to return non-accepted contributions and the lengthy reporting period covered by 30 Day reports will effectively mean that funds can be held for months before a decision to accept is required. With contributors required to report within 10 days of making a contribution, it appears probable that confusion will arise in some cases over whether a contribution was not reported or not accepted. See U.S. v. Hankins, 607 F.2d 611 (3rd Cir. 1979) for some problems.

There has been substantial litigation in California concerning candidates who allegedly manipulate an acceptance rule to avoid meaningful and timely disclosure to the public. Our worse fear with this new "acceptance rule" is that it will provide an avenue for abuse that we have largely avoided to date. The "possession rule" has its own simplicity and it may be preferable. See 2 AAC 50.333. If the intent is to establish criteria dictating the circumstances under which a contribution can be returned without any reporting, the timespan between receipt and return should be short.

Paragraph .060(a)(2) puts in different words the present Commission regulations that loans and loan guarantees are reportable. See 2 AAC 50.355. Proposed 2 AAC 50.313(a)(2). It adds a provision that campaign loans not reported in a timely fashion cannot be repaid from campaign funds. Although not clear from the statute, it appears the Commission could expand upon its present regulations and provide for complete disclosure of all personal contributions by a candidate from his or her personal funds and assets for the benefit of a campaign. Under present statute and regulations, a candidate can report personal contributions as a lump sum with no further documentation on the terms, guarantors, or security for the loan. If it is the intent of the provision that the APOC and public will demand to know more about these otherwise lump sum contributions, the statute should make some further reference for clarification purposes to what is reportable under paragraph (a)(2).

Paragraph .060(a)(3) provides for lump sum reporting of contributions of $250 or less but does not require reporting the number of contributors. The increased amount is in conformity with previous Commission proposals to alleviate the burdens of itemization for the "small" contributors. However, the staff is not quite certain the present Commission still has the same views with regard to raising the disclosure threshold from $100 to $250. The number of small contributors is a useful audit tool which should be included.

Subsection .060(c) requires 30 Day, 7 Day and December 31 (or Final) contribution reports. Location of filing should be clarified consistent with AS 15.14.020(i). The December 31 due date means that activity occuring on December 29-31 is not required to be included. A January 16 deadline would allow treasurers a breather over the holidays and account for the fact that January 15 is a federal holiday with no postal service.

AS 15.14.070 - Reports by Candidates of Expenditures Made

(a) - Suggested due date would be January 16, see comment above. Expenditure reports should also include the address of the recipient of the expenditure. (December 31 due date also appears in sections .080 and .090.)

AS 15.14.080, .090, & .100 - Political Group Reporting

A Political Group reporting under AS 15.14 must review all three sections for the due dates of different kinds of activity. Some expenditure activity appears not to be required to be reported at all. In addition, the reports required of individuals and entities not meeting the definition of group are also specified in section 100. The result is both confusing and subject to serious abuse by groups which might wish to take advantage of the lack of clarity.

As nearly as we can track a group's reporting requirements, the schedule would look like this:

Section	Information Required	Due Date(s)
.080	Incoming Contributions & Loans ("... all information required under .060(a) for candidates." Because the reference is about candidate requirements, it reads as though a group should report loans to candidat).	30 Day, 7 Day, December 31, 24 Hour
.090	Independent Expenditures of any size on behalf of a candidate	30 Day, 7 Day, December 31, 24 Hour
.100	Expenditures of more than $250 which are monetary or non-monetary contributions to candidates or other political groups or which are not independent expenditures.	within 10 days.
N/A	Expenditures of $250 or less which are monetary or non-monetary contributions to candidates or groups or which are not independent expenditures.	Not required.

It is our impression that a group treasurer is intended to comply with the due dates set out in three separate sections: .080, .090, and .100. Presumably AS 15.14.080 and .090 intend that a group which has both incoming contributions and outgoing independent expenditures will show both on one report due 30 days before an election but the draft does not say that. Adding a "within 10 days" reporting requirement (AS 15.14.100) for large contributions made by the group will make a treasurer's task very confusing. It will also generate hundreds of separate reports to be collated by staff if a complete picture of a group's activity is to be available to the public. The picture will be incomplete in any event because group expenditures of $250 or less are not required to be reported at all.

There's good reason to require groups to report both their income and expenses at the same time. Income tells you who is giving to the group, i.e., its actual sources of income. Expenditures tell you which candidates are receiving the group's money as well as benefiting from any independent expenditures made by the group. The fact that group expenditures are a combination of administrative expenses, contributions to candidates, and independent expenditures argues in favor of pre-election disclosure of expenditures. It would also be helpful to clarify in the statute that the group is required to identify on its expenditure report those items that are contributions or independent expenditures as well as the beneficiary of the contribution or expenditure.

Instructions for group reports should not be intermingled with instructions for organizations which are not required to report the source of their funds. The intermingling is likely to confuse both groups and "non-groups." It also

offers the potential for unnecessary litigation resulting from a group that uses the confusion to claim it is not required to report its income.

Our recommendation is that the "within 10 days" reporting deadline be reserved for individuals and organizations (not required to register as political groups) which:

1) make contributions exceeding $250; or
2) make independent expenditures of any amount.

As explained above, a change to the registration language would assure that the Commission knows which groups exist and should report.

Paragraph (a)(1) incorporates the candidates' instructions in AS 15.14.060(a) pertaining to reportable information. For clarity, the group instructions should be expressly set out in the statute. There are practices that make a political group different from a candidate and the candidate language could be misconstrued by a group treasurer. Groups do not solicit funds or receive loans for a clearly identified candidate in most circumstances. Their fund-raising seems to be intended to influence the outcome of an election which, in most instances, concerns the political future of various candidates. Sometimes their activities are devoted to ballot propositions, initiatives and other purposes. Further, at the time their fundraising occurs the group usually has no identified candidate which to support because it has not chosen one to endorse. Both the staff and the Commission may be hard-pressed to show that a reportable contribution must be made for or on behalf of a candidate, much less an identified one.

As to the definition of "independent expenditures" we note this comes from 2 CFR 109. As a practical matter, we suggest that the statutory provisions drawn upon in the Commission proposed regulation 2 AAC 50.313(8). As additional clarification, it may be helpful to describe those campaign agents and actors which the Commission will construe as prima facie evidence of cooperation and consultation with a candidate's campaign.

In AS 15.14.060(b)(2) there is a reference to a candidate's "authorized committee." This was apparently picked off the above FEC regulation. If it has any independent significance, it may be helpful to describe what an "authorized committee" is. Our fear here is that it is being used in the same sense as the FEC, and we have some speculations whether all the duties under 2 CFR 102 are to apply with equal force to this provision for an "authorized committee."

AS 15.14.100(a)(3) requires reporting of certain "expenditures...on behalf of a candidate which are not independent expenditures..." The Commission has always thought (and we think it is true of the majority of workers in other states and scholars in the field) that payments made "on behalf of" an identified candidate are either contributions or independent expenditures, and that the transactions are mutually exclusive. AS 15.14.100(a)(3) appears to be a restated version of the transactions contained in (1) or (2) which describe monetary and non-monetary contributions. If so, its deletion should be considered.

There is no special acceptance rule in the draft for contributions received by a political group. The Commission would have to decide whether to retain its present "possession" regulation for groups or make a revision based on the candidate's "acceptance" rule in the draft.

There is a particular problem with the fundraising activities of groups under the laws concerning games of skill and chance. The Commission has gone on record through legislative recommendations seeking to ban the use of funds raised through games of skill and chance by political groups and candidates. No organization using bingo, raffles, or monte carlo to raise funds can comply with the requirement to identify the source of each dollar it raises. By their very nature, games of chance and skill operate in a manner which defies an effort to name the spender. Such events are fertile territory for candidates and groups to accept funds which are otherwise banned, such as anonymous contributions and contributions in the name of another. A further issue which the Commission may be forced to litigate is the contention that game players are playing to win, not to influence elections. Such a contention argues that a raffle ticket purchase is not a contribution because it isn't intended to influence an election.

It seems doubtful that the draft intended to leave gaps in the requirements that groups report all their income and all their expenditures. It is less clear whether there is any utility in the suggestion that groups can be categorized into "independent expenditure" groups and "contributions to candidates" groups. Most groups in Alaska have mixed purposes. Many groups change their plans in mid-stream. Any provision that allows a group to maneuver around the disclosure of its income after the funds have been obtained will create intolerable enforcement problems. Manipulating the disclosure of income would allow groups to avoid the $1,000 limitation on incoming contributions which is proposed.

ARTICLE 2

CONTRIBUTION AND EXPENDITURES - LIMITATIONS AND PROHIBITIONS

AS 15.14.120 - Contributions by Persons

This section allows unlimited contributions by a person to a political party, a candidate, or a group formed solely for the purpose of sponsoring an initiative. It establishes for the first time, a $1,000 a year limit on the amount a person may give to a group. Discussion of the potential technical problems in the definition of "person" are contained on page ___. What if a group formed to sponsor an initiative decides to undertake independent expenditures on behalf of candidates? Such a group would be potentially much better financed to do than ordinary groups which have a $1,000 limit on their incoming funds. Initiative campaigns are notoriously one-sided when it comes to financing. Some thought should be given to whether an unlimited income provision would tend to foster or ameliorate that situation. Such a concern may ultimately be overridden by constitutional questions. Limitations on contributions to candidates have been upheld on the grounds of public interest in avoiding corruption or its appearance. Limits on contributions to groups may be harder to justify.

With respect to the policy of unlimited contributions directly to candidates, the Commission has not taken a position. In the most recent discussion, some members favored a retention of the $1,000 limit, and others continued to support an increase to $2,000. The question of lifting the limit entirely for individuals, corporations, and entities other than PACs was not posed at that time.

AS 15.14.130 - Contributions By Political Groups

This section retains the $1,000 per year limit on group contributions to a candidate and adds the same limit on group contributions to a group. It retains the political party exemption. It would be helpful if the law specified whether the exemption extends to political party organizations on the national level or in other states. Currently the statute does not do so. Only in the last two State elections have national party contributions begun to assume significance.

AS 15.14.140 - Limitations on Cash Contributions

This incorporates present law and could be clarified by inserting "single" between "a" and "cash" on line 25 so that it reads "a single cash payment."

AS 15.14.150 - Expenditures

Subsection .150(a) states the ability of political parties and candidates to make unlimited expenditures subject only to the requirements of .180 that the purpose be limited to influencing elections, repaying loans, and that surpluses be disposed of as allowed by .200. This may mislead the reader into thinking that candidates can contribute more than $1,000 per year to political groups in contravention of AS 15.14.120(b). The language raises the question of whether political parties are really intended to be able to fund PACs which are not official party subdivisions.

Subsection .150(b) states that independent expenditures, as defined by AS 15.14.090(b), on behalf of or in opposition to a candidate or ballot measure are unlimited. The definition of independent expenditures in .090(b) discusses activity only in relationship to a candidate and does not cover the concept of independence relative to ballot propositions. In discussing a situation involving expenditure activity supporting or opposing a ballot proposition, the real question would be whether the activity was independent of some group which is also trying to influence the outcome of the same measure. Suppose a group was the sponsor of an initiative and continued to be active supporting the proposition created by the initiative. Or suppose a group is simply supporting or opposing a ballot proposition. An individual whose expenditures to influence the passage or defeat of a measure were arranged, coordinated, or directed by a particular group would be making a contribution to the group rather than an independent expenditure.

(c) - This subsection appears intended to establish that political group expenditures on behalf of or in opposition to a single candidate or a single political group, are either independent expenditures or are contributions limited to $1,000 per year. The either/or concept is accurate and well worth stating but the draft uses a negative sentence construction and would be more effective in the positive voice.

AS 15.14.160 - Anonymous Contributions

The language used here comes directly from AS 15.13.070(d). Recent staff research into case law indicates the language may support escheat only in the case of anonymous contributions. (See Abood v. Flood, staff memorandum dated August 16, 1985, not yet considered by the Commission.) The Commission needs clearly defined authority to require the return or escheat of any prohibited contribution.

ARTICLE 4

CAMPAIGN MISCONDUCT AND ADMINISTRATION

AS 15.14.170 - Campaign Officers

This section is similar to existing law on campaign chairmen, treasurers and deputy treasurers. In subsection (a), the language allowing the appointment of deputy campaign treasurers "at any time" may lead to confusion between the appointing process and the registration process. "As necessary to comply with AS 15.14.170(e)" or "in writing" might be preferable to "at any time."

Subsection (b) should indicate a requirement to list on the registration statement the name, address and telephone number of any deputy treasurers. Public disclosure of individuals authorized to solicit and accept contributions is important information about the extent of a campaign's organization and financial activity.

In subsection (e), Page 22, line 17, the phrase "of the political group" should be deleted lest it cause confusion over the issue of whether a candidate's campaign committee is a "group." It would be particularly unfortunate in light of the different limits on contributions to candidates and to groups.

Similarly, in line 20, subsection (f), the word "candidate's" should be deleted lest a group's chair be deemed responsible for a candidate's campaign officers.

AS 15.14.180 - Use of Campaign Funds

There appear to be no technical problems with this subsection.

AS 15.14.190 - Termination of Campaign Activity and Closing of Campaign Accounts

This is similar to provisions in other states requiring close-out reports by candidates. We would like to suggest that close-out reports also be applied to political groups, perhaps as the appropriate mechanism for terminating the registration required in AS 15.14.050. This suggestion is brought forward mainly for the purposes of insuring that contributions to defunct political groups do not become entitled to a PCC and to help assure that an accurate listing of active groups be maintained.

Our strong felt suspicions have been there are a few political groups that have been registered for a long time and ocassionally report no activity, but are raising substantial sums for ostensibly political activities that are in

fact not election-influencing. The contributions are usually obtained on some promise the group will lobby for some position or take a side on a ballot proposition. Once the registration statement is filed, the Department of Revenue will pay over PCCs even if there is no quantifiable political activity. A special provision for terminating group registration and reporting may save the State of Alaska some funds or, at least, reduce the number of groups from whom staff must unnecessarily seek reports.

AS 15.14.200 - Surplus Campaign Funds

We see no major technical points in this provision. Some additional thought may be warranted on the language in (a)(5) directing the return of funds to contributors on a pro rata basis. Given that most campaigns have many small contributions, a mandatory pro rata distribution to every contributor is probably not practical.

AS 15.14.210 - Solicitation of Contributions

Consideration should be given to applying the principle of escheat to contributions solicited or accepted in violation of this section. See discussion of AS 15.14.160.

AS 15.14.220 - Identification of Communication

We see no technical problems with subsections (a), (b), and (c). The reference to AS 15.56.010(a)(2) raises two questions. First, is it the intent of this draft to suggest that the APOC would take some enforcement action on a provision which is outside its jurisdiction, as defined in AS 15.14.030, or is it intended to relieve the Commission of the burden of sanctions for improper identification? Second, is the lack of reference to AS 15.56.010(a)(1) an oversight?

If the Commission is intended to take an active role against newspapers or printers for identification failures, we are pessimistic of a productive result in light of substantial litigation on this issue. See 4 ALR 4th 724 and the case of Printing Industries v. Hill 382 F. Supp. 801 (S.D. Tex. 1974) with particular attention given to its writ history in State v. North Dakota Education Association, 262 NW2d 731 (N.D. 1978). Of course, a single opinion from a three judge federal court in Texas does not make Alaska law; however, the concerns expressed therein may indeed be real in any enforcement action initiated by the APOC against a newspaper.

ARTICLE 5

UNLAWFUL CONDUCT; CRIMINAL AND CIVIL PENALTIES; INVESTIGATIONS; PROCEDURES; HEARINGS.

AS 15.14.230, .240 and .250 - Felonies, Misdemeanors, and Civil Penalties

An important aspect of the draft which needs review is the mens rea or mental element specified in all three sections.

In general, both felonies and misdemeanors require actions or omissions to be "knowingly and intentionally." If the intent is to use the standard mental

elements in AS 11.81 (which is not specified in the draft), it may be simpler to mention a single felonious intent appropriate for the conduct. Under AS 11.81.610 an intentional act is done knowingly but a knowing violation does not include an intentional one. In effect, the knowing violation appears to be surplus usage and it may assist all concerned if consistency were maintained with the culpability standards in the criminal code. Further, if the mens rea selected is intended to have any meaning other than its uses in the criminal code, it would be helpful to have such laid out in AS 15.14.

In section AS 15.14.230(a)(5), three mental elements are provided for accepting excessive contributions, "knowingly and intentionally and willfully." "Willfully" has been subject to much litigation in the Alaska courts and it appears to have different meanings for different types of crimes. It may be appropriate to excise "willfully." See "Consciousness of Wrongdoing, Mens Rea in Alaska," Alaska Law Review; (1984).

With respect to the use of the "knowingly and intentionally" language in the misdemeanor section, "intentionally" seems to be quite a hefty mens rea for a misdemeanor. "Knowingly" should be considered instead.

AS 15.14.250 inserts "negligently and inadvertantly" as mental elements for acts subject to a fine by the Commission. These mental elements are undefined in the criminal code and we assume the Commission will adopt its own standards through litigation. Further, we also assume the mental elements for a civil penalty are something more than a strict liability criminal offense and it is not necessary to provide an express legislative directive that these violations could become strict liability crimes through interpretation. AS 11.81.610.

The Commission has developed a wide ranging and detailed jurisprudence concerning the appropriateness of any assessment of civil penalties. Like the Alaska courts, the effort is aimed at deterring the offender, deterring others in like situations and, frankly, making it unprofitable for a candidate or political group to violate the law. Therefore, the fine schedules in the proposals may be too low. We support a cap on any fines levied by the Commission, but request that fines be capped at the $10,000 range rather than at the $5,000 and $2,500 range.

AS 15.14.250(c) offers an example of why the fines may be too low. This subsection specifies a maximum fine of $2,000 for failure to report expenditures in a year-end or final report. Since this is the only due date for expenditure reporting by candidates, $2,000 seems too small to effectively sanction the failure to report expenditures, especially in races where expenditures range from $50,000 upwards.

Typographical Problems:

Page 29, line 15 - There is no AS 15.14.060(b)(3); it seems likely the intended reference was .060(c)(3) for year-end or final reports.

Page 30, line 21 - AS 15.14.220(b) deals with proper identification; the correct reference would be .210(b) which concerns solicitation.

Page 32, lines 15-18 - Civil penalties (at differing levels) are provided for AS 15.14.250(a)(9) in both .250(d) and .250(e).

Finally the use of the word "person" to describe the violator may pose a problem if the definition of "person" continues to indicate that "person does not include a political group."

AS 15.14.260 - Payment of Fines

Specifies that fines may not be paid from campaign funds. In the case of political groups, this may be an impossible Catch-22. If the chair of a group pays the group's fine, the payment would appear to be a non-monetary contribution and hence, from "campaign funds."

AS 15.14.270 - Removal from Office

We have no technical concerns with this provision.

AS 15.14.280 - Limitations on Actions

AS 15.13 presently has a 4 year statute of limitations. The AS 15.14 draft sets out four years as the time limit for commencing felony prosecutions, two years for misdemeanors, and 18 months for civil penalties. The reduction to two years for misdemeanors may raise a policy issue for Commission concern, especially in light of the fact that some terms of office are three or four years.

It is the 18 month limitation for violations (Civil Penalties) that causes the most consternation on the staff level. The provision is vague and unduly burdensome, and may result in substantial violations of the law going unprosecuted. The language in AS 15.14.280(c) should specifically provide that proceedings be instituted before the Commission within a certain time rather than by the Commission. If desired, a separate time frame could be set for judicial proceedings for collection of a civil penalty after a final decision by the Commission. This would avoid any apparent ambiguity in the statute that judicial proceedings need to be commenced within the 18 month window.

Many of the violations by candidates would not surface until the filing of a Final Report. These are due 30 days after the swearing in of a successful statewide or legislative candidate. AS 15.14.060(c)(3). Assuming the candidate is promptly audited (a large assumption considering the size of these reports and their February due date), and promptly responds, staff knowledge of a violation may not occur until 12-18 months after the violation. If such violations are time barred, our only alternative might be to proceed with misdemeanor or felony investigation with the hopes that the same violation reveals sufficient evidence the act was committed intentionally or knowingly.

An example may illustrate some of the practicalities of trying to enforce civil penalties under the 18 month constraint.

Candidate Joe Jones accepts an excessive contribution from a known political group in the total amount of $1,250 in checks with denominations of $250 or less. This contribution is accepted in the beginning of his campaign which could be months before the election. He does not report the contribution. The staff receives a timely expenditure Final Report that shows candidate Jones spent more money than he reported as being received. His reports are audited

and the question asked whether he forgot to report a contribution. Candidate Jones takes about 30-45 days researching his records (some candidates hire a bookkeeper or auditor to straighten out their records), and responds he received an excessive contribution from a political group. By this time, a year has passed and the realities of the audit process have reached a point where we have to make the decision whether to proceed by accusation. Although we would like to find out more about this excessive contribution (Did the candidate know he received a contribution from a political group? Did the candidate negligently or inadvertantly accept an excessive contribution and negligently or inadvertantly fail to report it?), the staff must rush to judgment on this matter and guess whether there is sufficient clear and convincing evidence to conclude that the candidate negligently or inadvertantly failed to timely report an excessive contribution.

Because of the press of time, the only option would be to file an accusation to get inside the 18 month window. Because there are no standards for finding of negligence or inadvertance, a strict liability theory for accusations would initially prevail with the concurrent result that some candidates would suffer the consequences of an unnecessary adjudication.

It would be preferable that the statute of limitations for violations be at least compatible with the misdemeanor section. A short period of limitations will cause candidates to avoid responding to audit requests in the hopes any claims become time barred. It will also put an undue strain on staff to commence accusations when we are not clearly convinced that an act was committed negligently or inadvertantly.

At present the staff proceeds on any accusation against a candidate only when we believe there is sufficient evidence to convince the Comission or subsequent Court or jury that a prohibited act has occurred beyond a reasonable doubt. Speculative claims or allegations without full and complete investigation cause undue embarrassment to the subject of the investigation and unnecessarily waste the public's resources.

Page 35, line 11 - should read AS 15.14.230.

AS 15.14.290 - .330 - Investigations, Accusations, Notice of Defense, Hearings, Imposition of Penalty

Page 36, line 4 and Page 42, line 11 - AS 24.50 should be AS 24.45.

Staff considers two major items to be of concern in the draft:

1) the effort to set out a mini-version of the Administrative Procedures Act requirements within AS 15.14 may create unnecessary and time consuming points of contention; and

2) the simple, direct appeal of civil penalties to the Commission now found in AS 15.13.125, AS 39.50.135, and AS 24.45.141 has been replaced by the cumbersome notice of defense language and procedures that will be both burdensome and intimidating to the majority of candidates and groups which simply filed late reports. The public, the respondents, and the Commission would be better served by continuation of the affidavit appeal for simple delinquency and a direct statement of the requirement to abide by the Administrative Procedures Act in circumstances requiring a hearing.

The staff has no objection to Mr. Gross's desire to extend his personal ban on plea bargaining to this arena. See AS 15.14.330(d). It should be noted, however, that one or two persons are insufficient resources to police all the possible campaign violations throughout the state of Alaska. Unlike the District Attorney's Office with its abundant resources and personnel, it is sometimes difficult moving the multitude of campaign disclosure violations through administrative litigation if plea bargaining is not used to alleviate the crunch. However, we recognize there are basic judgment calls which the staff should not be making when it engages in activities designed to secure a written Consent Agreement and it may, indeed, be proper to reserve all these consent discussion determinations for the Commission. In fact, there have been few instances of plea bargaining; most have concerned appropriate charges ("charge bargaining").

In AS 15.14.330(a)(2) there is a requirement that violations be shown by clear and convincing evidence. Most administrative adjudications are by a preponderance of the evidence. Clear and convincing evidence may be an undue burden to impose upon a small staff.

AS 15.14.340 - Confidentiality

A question regarding the proposed confidentiality of investigations [AS 15.14.030(8)] arises from the standard audit function. Most audits are performed to check the mathematics of reports, and otherwise assist campaigns in complying with the law. If one had to specify whether an audit is assistance [AS 15.14.030(2)] or an investigation [AS 15.14.030(8)], most audits are a means of rendering assistance to campaigns. Of course, audits are investigatory in one sense because matters of potential volation are usually first explored in an audit. If any and all audit reports are synonymous with investigations, it may be necessary to include by express language that audits are also confidential. See AS 09.25. 110, Public Records Act. If audits are something different than investigations, clear statutory standards should be provided to determine when to close a file because it has entered the investigation arena.

A second question related to the proposed confidentiality of investigations concerns the effectiveness of a gag order on staff only. Those who have chaffed at press reports that their actions were under APOC review apparently assume that staff initiates press contact on such subjects. That is incorrect. The complainants are the ones seeking press coverage and they frequently do so before, or simultaneously with, sending a complaint to the Commission. The proposed "no comment" situation by staff will only leave complainants free to publicize their distorted views of what happened and whether or how the law might apply.

The wording of the draft would appear to require the "no comment" situation to continue ad infinitum in a case where the decision was made to file no accusation.

Staff does not support the confidentiality proposal because it would not cure the perceived problem but rather increase the pressure to formulate an accusation. If the language remains, it should at least specify that complainants, respondents, and persons contacted in the course of an investigation be

subject to the same restrictions on confidentiality. See Bar Rule 22(b). Unlike the majority of Revenue investigations that concern documents and receipts, our investigations are directed towards conduct, state of mind, and actions by persons that may or may not be memorialized in a document. Gagging complainants, respondents, and persons contacted during the course of an investigation might discourage frivolous or spiteful complaints on election eve. Of course, it will also create another category of potential violations to monitor.

AS 15.14.350 - .370 - Judicial Review, Powers, Legal Counsel

Staff comments on these sections are primitive and subject to addition at a later date.

Section .360, Powers of the Commission, omits what appears to be broader boilerplate now appearing in AS 15.13.040(a). Potentially related is a concern raised by counsel in the past that AS 15.13.120(d) implies the Commission can issue orders but the plain statement "can issue orders" never appears.

Perhaps the sections on powers and legal counsel would be more appropriately included in Article I. Somehow the concept that there is a necessary relationship between "duties" and "powers" seems fitting.

Section .370 provides that a request for a special prosecutor be made to the Attorney General rather than the Cheif Justice of the Supreme Court. In the Worthington case, the court indicated that it could not appoint a prosecutor as such a case might ultimately be appealed to the Court. While one can hypothesize a case involving the Attorney General or some member of the Administration where friction might arise over the request, there seems little alternative but to hope:

1) it won't happen; and
2) if it does, a denial by the Attorney General would create a public furor that would give cause for reconsideration or judicial relief.

The new language also limits a request for a special prosecutor to cases involving Campaign Disclosure misdemeanors or civil penalties (AS 15.14.240 and .250). No such limitation is appropriate because of the wide range of appointed and elected officials subject to AS 39.50 and because AS 24.45 is also within the Commission's perview.

A second change in the section on legal counsel specifies that the Commission must have the concurrence of the Attorney General to hire temporary legal counsel. This seems an unnecessary provision that will only give the appearance of a desire to unduly frustrate the Commission's efforts.

ARTICLE 6

MISCELLANEOUS PROVISIONS

AS 15.14.380 - Definitions

An area staff considers critical on a technical level is the language used in definitions. These words are extremely important, and define the subject matter jurisdiction of the Alaska Public Offices Commission. The scope and

content of AS 15.14, with its panoply of registration, reporting, criminal sanctions and administrative proceedings depends in the final analysis on the type of activity with which the Legislature wishes the Commission and staff to be concerned. Tight, concise, clear, and appropriate definitions gives the public notice constitutionally required and insures governmental restrictions do not lean too heavily upon fundamental freedoms. It may be an engrained bias of all adminstrators to be given a clear law which to administer, but we at the staff level (and most likely the public as well) need clear marching orders from the Legislature as to what is, and is not, reportable as well as what is, and is not, prohibited. Felony, misdemeanor and civl penalty violations need to be clear and convincing to the Commission and to a court as well.

AS 15.14.380(1) "Candidate"

The definition of "candidate" conforms to the registration requirement of AS 15.14.040, and is substantially consistent with the Commission's recommendation that candidates register and report when they begin acting like candidates.

AS 15.14.380(2) and (3) - "Contribution" and "Expenditure"

The definitions of "contribution" and "expenditure" are transfers from AS 15.13 and correct one problem we have had under AS 15.13.100. See Al Adams, staff memorandum dated June 13, 1984, copy enclosed.

However, we do wish to caution that with the delayed reporting schedule for expenditures, the distinction between a contribution and an expenditure will become doubly important for reporting and enforcement. Candidates will first have to make their own judgments whether a pre-election transaction is a "contribution" or an "expenditure" and we suggest some care be used to insure that the definitions are mutually exclusive and crystal clear.

The distinction between "contributions" and "expenditures" may also be serious for groups if the group expenditure reporting questions are not addressed. For example, under the proposed schedule, when would a group report a non-monetary contribution it received if that contribution were used as an independent expenditure?

A final question about contributions which exists under the present statute and which is not addressed by the draft, is a specification that any income raised by a candidate or group via fund-raising is a contribution. See 2 AAC 50.405(4).

AS 15.14.380(4) and (5) - "Individual" and "Municipality"

These are the same as AS 15.13. For clarity, the population threshhold might be added to the municipality definition.

AS 15.14.380(6) - "Person" and AS 15.14.380(7) - "Political Group"

The definitions of "person" and "political group" are critical.

In the "political group" definition, "a person or combination of persons... which accepts contributions" becomes a political group. The "joint action" phrase is eliminated.

In the Commission's most recent effort, proposed regulation 2 AAC 50.356, a group is:

> ...every two or more persons who are elected, appointed or otherwise chosen or who cooperate for the purpose of raising, soliciting, collecting, or disbursing money or anything of value, or directing or controlling the raising, solicitation, or disbursement of money or anything of value for securing or defeating the election to public office of an individual or candidate or securing or defeating a ballot proposition...

Our concern over the "political group" definition deals with the parameters of acceptance. If acceptance has the same meaning as the special acceptance rule for candidates (AS 15.14.060(b) - a contribution is accepted when used by the candidate or retained until the end of the reporting period), a combination of persons can raise funds to their hearts' content and not report the war chest until reports are due immediately before the election, as long as it can avoid making an "expenditure" (and, indeed, a nonreportable one at that). However, the staff believes acceptance by a group has some meaning different than the special rule for candidates.

As you know, acceptance can mean a lot of things to different people. It can range from an exclusive physical possession coupled with an intent to retain the item permanently, to the power to exercise dominion and control ("discretion?") over who receives the contribution. The "dominion and control" test seems to be the appropriate one because it meshes so cleanly with AS 15.14.050(c), the "VECO rule." However, additional clarification may be appropriate so that the Commission has a clear understanding as to the legislature's intent.

The most serious of technical concerns are with the definition of "person." It provides:

> "Persons" means an individual, partnership, committee, association, corporation, labor organization or other organization or persons for business or other purposes. Persons does not include a political group. (Emphasis added).

At first blush, this definition of "person" appears to be inconsistent with the definition of "political group." In the latter it is provided that a "political group" is "any person" who does certain described acts, i.e., accepts contributions. However, .380(6) provides a "person does not include a political group." If the exclusive language in .380(6) is given any substantive effect, a corporation, committee, association, or labor organization may do any and all acts that would commonly be understood to be group activity and still avoid registration and reporting because of the express exemption that comittees, associations, corporations, and labor organizations are not political groups.

We also have some common sense hesitations with including "committees", "associations" or "organizations of persons for...any other purposes" in the definition of "person." It would be appropriate to either define these entities or excise the reference altogether. Our review of the reports of political groups over the years leads us to believe that many (and, in fact, most of the groups) could qualify as a "committee," "organization" or "association" and thereby avoid registration and reporting as a political group.

The exclusion of "political group" as "persons" has a serious effect on how AS 15.14 is to be enforced. Violations and criminal sanctions can only be brought against "persons." "Persons" do not include "political groups." Since there are few if any sections in present law or the proposals imposing civil or criminal liablity on any of the major actors in a "political group," the persons which compose the "political group" must be held responsible for each and every violation of the Campaign Disclosure Law. The "political group" will not be named as respondent, not responsible for paying a fine from its available assets, or complying with those portions of AS 15.14 requiring "persons" to do any act.

Our suggestion is that "persons" from AS 15.13 be retained without the surplus exclusionary language.

Since the "controlled" language in the group definition is primarily directed at the $1,000 limitation on contributions to candidates, some brainstorming should be done on the validity of its continuation here. In any event the discrepancy between "more than 50%" here and "50% or more" in section .050 should be eliminated. The controlled group concept may have continued value to keep candidates from creating several subcommittees, each of which gets $1,000 from the same political group. But it is likely the re-drafting and its placement in the statute could be more to the point.

cc: Pat Kennedy
Dick Monkman
Gross & Burke
Brooke Miles

Attachments: Memo to R. P. Burns from A. Gross, dated 1/5/78
FPPC Bulletin, dated 10/1/85
Memo from C. Johansen to APOC Members, dated 8/16/85
Memo from T. Pittman to APOC Members, dated 6/13/84

02-0018 (Rev. 10/76)

STATE of ALASKA

MEMORANDUM

RECEIVED
JAN 10 1978
PUBLIC OFFICES COMMISSION

TO: Randall P. Burns, Executive Director
Alaska Public Offices Commission
610 'C' Street, Suite 209
Anchorage, Alaska 99501

DATE: January 5, 1978

FILE NO: J-66-365-78

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

By:
Rodger W. Pegues
Assistant Attorney General

SUBJECT: Contribution of state monies to Friends of Higher Education. Your File No. 77-5.

At the commission's request, you have asked whether a state agency, here the University of Alaska, may contribute to a private group to influence the outcome of an election. We had previously been asked, in regard to the same subject, whether the University of Alaska (or other state agencies) could expend state money to influence bond propositions.

The law on campaign contributions and expenditures applies to political parties, persons, individuals, candidates and groups. With respect to your question, which focuses on groups, "groups" are defined as being comprised of "persons or individuals". AS 15.13.130(3) The latter is described as a "natural person". AS 15.13.130(5). And a "person" is defined as, in addition to the terms set out in AS 01.10.060(7), including a labor union. AS 15.13.130(7). The definition of "person" in Title 1 includes corporations, partnerships, firms, associations, and the like but it does not include the state or its agencies. Thus, it appears that the law has no application to contributions made by a state agency.

Moreover, we are not at all certain that the so-called "Friends of Higher Education," constitutes a group within the meaning of the law. Given the university's complete control of the organization, its own official's serving as the organization's treasurer, and its funding of the organization's activities, the Friends of Public Higher Education appears to be an agent of the university. As indicated above, a combination of persons as a part of the state government is not covered by the law. Thus, there is a substantial question that the law even applies to this organization. Assuming that it does, it plainly does not apply to contributions from a state agency, because the latter is not covered by the act.

We concur with the staff's recommendation that no

action be taken on this one. If asked to do so, the university and its "Friends" will undoubtedly make full reports. If the commission believes that the university or other state agencies should be covered by the act or that they should be prohibited from spending state funds for campaign purposes, it is peculiarly within its authority, and indeed, among its duties, to make recommendations for a change in the law. AS 15.13.030(9).

RWP/pjg

FPPC

BULLETIN

FAIR POLITICAL PRACTICES COMMISSION

October 1, 1985
Vol. 11, No. 10

428 J Street, Suite 800, Sacramento, CA 95814 (916) 322-5901

REFORM LEGISLATION ENACTED

Major reform legislation sponsored by the Fair Political Practices Commission has been signed into law by Governor Deukmejian.

Assembly Bill 688, authored by Assemblyman Patrick Johnston, will significantly strengthen the campaign disclosure provisions of the Political Reform Act.

The bill, commonly referred to as the "PAC ID" bill, requires the clear identification of organizations (e.g., associations, businesses, unions) that sponsor political action committees.

When AB 688 (Chapter 498, Statutes of 1985) becomes effective on January 1, 1986, the name of every political action committee which has a sponsor will be required to include the name of its sponsor on all campaign disclosure statements and political mailings sent by the committee.

Commission Chairman Dan Stanford commented, "One of the most important purposes of the Political Reform Act is to inform the public about the sources of campaign contributions. However, attaining this goal has been seriously impeded by the fact that many political action committees use names that are totally non-descriptive, confusing and misleading. In the past, the sources of large contributions often have been identified as nothing more than acronymns and 'good government' PACs. This legislation effectively resolves a serious problem."

Assembly Bill 688 addresses this problem by requiring the name of a "sponsored committee" (e.g., PAC) to include the name of its sponsor. The specific provisions of the new amendment to the Political Reform Act are:

- A "sponsored committee" is a committee sponsored by one or more "persons" (i.e., entities). Committees controlled or sponsored by an individual (e.g., a candidate's controlled committee) are excluded. Associations, businesses and unions will account for most "sponsors."

- An association, business, union or other entity sponsors a committee if any of the following occurs:

  (1) It provides all or nearly all of the contributions received by the committee;

  (2) It collects contributions for the committee by payroll deductions or dues from its members;

  (3) It provides all or nearly all of the administrative services for the committee; or

  (4) It sets policies for soliciting contributions or making expenditures of committee funds.

- The name of a sponsored committee must include the name of the sponsor. If the committee has more than one sponsor, and the sponsors are members of an industry or other identifiable group, the committee name must include a term identifying the common industry or identifiable group associated with the sponsors.

- A sponsored committee must identify its full name on its statement of organization when the committee registers with the Secretary of State. Only one name may be provided on the statement of organization (which can be amended), and this name must be used whenever identification of the committee is required by law.

- With respect to ballot measure committees, a statement that the committee is "a committee for (or against) Proposition __" must be included in any reference to the committee required by law.

MEMORANDUM State of Alaska

TO: Commission Members

DATE: August 16, 1985

[11]

TELEPHONE NO:

FROM: Chris Johansen
Associate Coordinator

SUBJECT: McConkey v. Flood/Quadrant Contribution Fund, Alaska Star

As you may recall (prior staff memorandums without exhibits are attached as items A_1 to A_{15} this matter has been reduced to the filing of Campaign Disclosure Statements or reports by two previously unregistered groups (i.e., Quadrant Contribution Fund, Alaska Star), payment of money to the state treasury, and requests by the staff that the recipient candidates repay prohibited contributions.

As discussed at the June meeting, candidates Knowles, Fink, Flood and Smith were requested to make repayments to Quadrant. Pages B_1 to B_{10}. Mayor Knowles responded in writing raising the point he had no notice of the Quadrant investigation. He repaid Quadrant $1,350.00. Page C_1 - C_3. Assemblyman Smith responds in writing stating the money received from the Quadrant employees was related to a nonelection municipal issue (vehicle inspection). Pages C_4 - C_6. Assemblyman Smith has not repaid the Quadrant Contribution Fund or the employees. Mr. Flood has received a written request for repayment of the Quadant Contribution Fund excess contributions but none for the Alaska Star contributions. In a phone conversation from New Hampshire, Mr. Flood said he had tight finances but would be making repayment of the Quadrant funds shortly. Nothing further has been heard from Mr. Flood.

Mr. Fink refuses to make the repayment and explains in writing he was unaware of the Quadrant investigation or of the fact Quadrant employees received reimbursements from the Quadrant Contribution Fund for their individual contributions. Pages C_7 - C_8. He states:

> We reported the contributions as we received them from individuals shown on the checks or check stubs. You should not place a burden on each candidate to cross examine each contributor to determine if the funds are proper so long as there is no apparent discrepancy or there is no actual knowledge of a discrepancy. We certainly were not aware of any discrepancy. (My emphasis).

.....

> I hope you will weigh in your effort to enforce the law, the deleterious effect you will have on the election process. You are ferreting out items after the fact that put a candidate and a candidate's workers,

particularly treasurers, at risk. At best you are being arm-chair quarterbacks the day after the game and fining any player who called a play that you the spectator, felt was in error. And there are as many different questions of plays as there are arm-chair quarterbacks.

IS THERE STATUTORY OR REGULATORY AUTHORITY TO DEMAND REPAYMENT OF EXCESS OR ILLEGAL CONTRIBUTIONS?

There is no statute or regulation clearly stating a candidate receiving illegal, excessive or prohibited contributions is compelled to make some sort of repayment or forfeiture to the contributor. AS 15.13.070(d) does provide a limited repayment duty. It provides, in part, as follows:

> A contribution made by a person wishing to remain anonymous, and received by a candidate, campaign treasurer or deputy campaign treasurer, may not be used or expended, but shall be returned to the donor, if his identity is known, and if no donor is found, the contribution escheats to the state, if not donated by the candidate to the charity of his choice.

Knowingly accepting a contribution in violation of any subsection of AS 15.13.070 is a criminal offense. AS 15.13.12(a)(6).

Of particular interest here is that repayment, escheat, or donation to a charity is not dependent upon the knowledge of the candidate at the time the contribution is received. By an express interpretation of the statute, the candidate must repay upon receipt of a contribution from a person "wishing to remain anonymous." Repayment can be demanded regardless of whether knowledge is brought home to the candidate that a contributor wishes to remain anonymous, and the candidate is strictly liable for escheat, repayment or donation whenever a contribution can be reasonably classified as "anonymous." Knowingly receiving an anonymous contribution or one made by a person wishing to remain anonymous is, in addition to escheat, repayment and/or donation, a criminal offense punishable as a misdemeanor if proven beyond a reasonable doubt. AS 15.13.120(a)(6).

The staff has no reason to doubt that Quadrant Employee contributions received by the candidates came by check that appeared properly issued. The Quadrant employee contributions were reported by the candidates as being received from an identified person who the candidates erroneously believed was the source. Likewise, the checks from the Quadrant Contribution Fund were incorrectly reported as being received from the subsidary Quadrant companies instead of the Quadrant Contribution Fund, and, indeed, met the legal requirement that a contribution be identified as being received from a person.

The problem with all of the Quadrant contributions is not that they omitted a name altogether, but that the name for which the contribution was ostensibly made was a wrong one, with the result these employee and group contributions may have been in fictitious names or in the name of another.

A candidate's knowing acceptance of a fictitious contribution or one in the name of another maybe, under some circumstances, a criminal offense. AS 15.13.120(a)(6). However, AS 15.13.070(d) does not expressly provide these contributions are escheated to the state, required to be donated to a charity, or compelled to be repaid to a contributor. If the lack of any interim administrative remedies other than criminal prosecution indicates a legislative intent not to rely upon escheat, repayment or donation, it may be reasonably concluded the Commission could not compel the repayment of contributions in the name of another, fictitious contributions, or excessive contributions, unless it is prepared to begin a criminal investigation with concurrent notice and hearing in each individual case.

Further, the Commission should hesitate in construing a forfeiture requirement if it would lead to an unreasonable result. The alternative remedial methods for anonymous contributions are ill-suited for fictitious contributions or those in the name of another. Both sanctions seem directed at deterring persons from propping up a "straw man" with which to funnel money to campaigns in order to avoid disclosure or the contribution limitation. Although the "straw man" can be implicated in a criminal violation, it is the person who holds the purse strings and controls the flow of contributions through the "straw man" that may have knowingly committed all acts necessary to complete a criminal offense. It seems incongruous to staff for this Commission to permit a candidate to make a choice for disposition of an illegal contribution by making repayment to the very person that is primarily responsible for the commission of a criminal act in the first instance. As Mr. Fink states, a repayment order[1] under this set of circumstances places the candidates in the position of being guarantors that no "straw man" contributions are received, a burden that has no requirement the candidate have knowledge or reason to know that a "straw man" is involved in the transaction, or that the underlying facts could have, after exhaustive investigation, disclosed some form of an illegal contribution, at least to the extent that would trigger immediate election of escheat, repayment or donation. Staff believes that if the Campaign Disclosure Law requires such a result it would have expressly said so, and that the exclusive administrative remedy under the present statute and regulations[2] is a criminal proceeding for a knowing receipt of a fictitious contribution or one in the name of another.

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[1]Staff is of the opinion this Commission has absolute authority and discretion to make a repayment request at any time for any type of prohibited contribution in order to purge the campaign marketplace of any contributions reasonably construed as illegal. Candidates should be given the option to comply. If they choose not to comply with a reasonable Commission request, the Commission and its staff should be concerned, as here, whether it has clear authority or regulatory power to demand repayment, together with whether there is credible evidence to believe a criminal act has been committed.

[2]Under proposed 2 AAC 50.356 and 2 AAC 50.357, the "straw person" and the source would be, in addition, a group required to file Campaign Disclosure Statements.

Some persuasive force to staff's view is presented in the case of People v. de Grazia, 434 NE2d 543 (Ill. App.Ct 1982). There an Attorney General brought a civil action to compel escheat to the state of certain contributions ($48,300.00) reported by a gubernatorial campaign as being made by a Mr. de Grazia (the "straw man") but actually made by another. In Count II the Attorney General sought imposition of a constructive trust and an accounting in favor of the state for the candidate's wrongful use, conversion, or appropriation of "anonymous" contributions. Id. at 544. Section 9-25 of the Illinois Election Code shares many of the prohibitions of AS 15.13.070(d) and provides:

> No person shall make an anonymous contribution or a contribution in the name of another person, and no person shall knowingly accept an anonymous contribution made by one person in the name of another person. Anonymous contributions shall escheat to the state of Illinois. Id. at 545.

According to Illinois law, escheat is penal in nature and calls for a narrow construction. Anonymous contributions, like Alaska law, are undefined but, according to the Illinois court, occur where "the contributor is unknown, unnamed, or the source of origin (donorship) cannot be identified."[1]

Anonymous contributions are not synonymous with those in the name of another because

> ...the statute plainly refers to two separate types of prohibited contributions, providing different sanctions for each type of contribution. Id.

.....

> Applying a strict construtution to section 9-25, we hold that it does not provide a statutory remedy to the Board of Elections for contributions made by one person in the name of another. Id. at 546.

Since the Attorney General could identify in the complaint that de Garzia (the "straw man") donated $48,300 to the gubernatorial candidate but not in fact the person who supplied the funds, there was no anonymous contribution as a matter of law, and, alternatively, the state could not compel escheat for a contribution in the name of another. Therefore, the Court affirmed the lower court's order dismissing the Attorney General's complaint for failure to state a claim for which relief could be granted.

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[1]Donorship appears to be used by the Court in the gift sense requiring delivery of the money with an intent by the donor the donnee retain the funds permanently.

If repayment authority is narrowly limited to anonymous contributions,[1] the only administrative remedy may be criminal proceedings pursuant to AS 15.13.120(a)(6). To proceed in this fashion, the staff has always taken the position there must be some credible evidence by which to form a preliminary opinion or belief that a criminal violation has occurred. Paul Fischer, February, 1985 (Consent Agreement); Staff v. Clossey, Norris and McConkey, June, 1985 (pending criminal and civil penalty matter).

There are two types of potential violations by the recipient candidates in the Quadrant situation. The first concerns contributions in the name of another. AS 15.13.070(d). The second concerns acceptance of excessive group contributions. AS 15.13.070(a); AS 15.13.120(a)(6).

As explained in the foregoing, Quadrant employees made contributions to all the candidates and subsequently received reimbursement from the Quadrant Contribution Fund. If all or some of the recipient candidates (excluding Assemblyman Smith see attached correspondence at C_9) were aware of or had knowledge of the subsequent reimbursements, there may be some evidence to form a factual or legal justification for proceeding with a preliminary investigation. 2 AAC 50.460. However, based on the fact all employees of Quadrant first paid to the candidates by personal check, there does not appear to be any documentary evidence that could have alerted a candidate or treasurer of the appearance of a questionable donation, and all responding candidates steadfastly deny any awareness or knowledge of a collusion between the Quadrant Contribution Fund and the Quadrant employees, the staff feels hard pressed to find any knowledge by the candidates that contributions were received in the name of another. However, a somewhat clean documentary trail and conclusionary denials by the candidates should not preclude further scrutiny by way of a preliminary investigation if there is other credible evidence to form a belief the candidate's denials are not plausible.

It is on this basis staff recommends the matter be concluded. The candidate's written responses are candid, truthful, and appear to have been made in good faith. As pointed out in Mr. Fink's written response, the error which has been already disposed of by this Commission occurred in the Quadrant offices when funds were pooled and employees were reimbursed for contributions already made.[2]

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[1]The Illinois decision is solely based on an Illinois statute and has, at most, some persuasive force. It is by no means controlling, nor should this Commission feel bound by it. However, the general authority for the proposition that escheat is penal in nature and calls for a narrow construction of the statute is widely accepted, and you may come to that view after discussions with your attorney. 27 Am. Jur. 2d Sec. 879 Escheat at notes 15-16 (1966). If this reasoning is accepted, the staff can find no facts or rationale by which to conclude the Quadrant contributions are anonymous contributions and, likewise in the name of another.

[2]Proposed 2 AAC 50.357 clearly prohibits this type of conduct and provides civil as well as criminal penalties for doing so.

The second matter concerns the receipt by the candidates of single checks directly from the Quadrant Contribution fund in excess of $1,000.00. As explained in prior staff memoranda, the Fund checks had attached an invoice that apparently intended to allocate portions of the check proceeds between several of the Quadrant affiliated companies. If the invoice intended to make such an allocation (an intent that appears to have been brought home to the candidates who reported the contributions as allocated by the invoice), the recipient candidates could be charged with knowledge they would be committing a criminal act if there was reasonable basis to conclude these contributions in excess of $1,000.00 were from a single group.

It can be safely assumed that each of the recipient candidates had constructive notice of 2 AAC 50.395 at the time the contributions from the Fund were received. 2 AAC 50.395(q) in characteristically ellipitical language defines a group as two or more person who engage in special fundraising and uniform assessments amongst its members. Political groups are also "contingency funds" wherein more of the money during a period is spent on political contributions than any other purpose. 2 AAC 50.395 (a).[1]

This Commission has studied its group regulations with intensity over the past few months and proposed that 2 AAC 50.395 be repealled in its entirety. The reasons for repealer have been explained in prior staff memoranda and discussed with the Commission. Largely because the basis for any criminal prosecution against candidates would depend on the clarity of the notice given in present 2 AAC 50.395, and, indeed, the proposed regulations could be construed as an implicit admission they are unclear, the staff finds a criminal preliminary investigation would be insupportable under the present status of the regulations for the same reason changes were proposed by staff in the first instance.

The staff also finds as a factual matter that it is reasonable to conclude, as Mr. Fink points out, that they had no notice of the internal machinations of the Quadrant Contribution Fund prior to receipt of the Fund checks. It appears the candidates mistakenly assumed the invoice was a proper allocation of the check proceeds and reported the contributions accordingly. Although ample arguments exist to show that receipt of any check in excess of $1,000 in this instance amounted to ordinary and, indeed, gross, negligence under the Campaign Disclosure Law, the staff cannot find any basis for concluding the recipient candidates had knowledge they were committing a criminal act at the time the check proceeds were received.[2]

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[1]2 AAC 50.395(a) has all the evils referred to in note 1 of the next page. A recipient candidate would have no reason to know he was dealing with an unregistered group under (a) until all the contingency fund money has been spent and the political funds were "more than any other single purpose."

[2]There has been some speculation at the staff level that if no evidence exists for showing the acceptance of the contributions were knowing at the time they were received, the knowledge element was indeed brought home to the candidates when they were informed of the results of the staff preliminary investigations. (Con't. on next page)

SHOULD THE COMMISSION ADMONISH RECIPIENT CANDIDATES WHO CONTINUE TO RETAIN (or have already spent) CONTRIBUTIONS THEY SUBSEQUENTLY LEARN ARE ILLEGAL?

As stated in the foregoing, this Commission should not hesitate to admonish candidates who fail to avoid through ordinary or gross negligence an appearence of wrongdoing under the Campaign Disclosure Law. This policy should apply regardless of whether it is before or after the fact. AS 15.13.070 is rather clear that a candidate cannot, directly or indirectly, accept fictitious or contributions in the name of another. This prohibition has been in Alaska statutes since 1974, and all candidates engaged in reportable activity should at least adopt procedures to prevent such a prohibited act from occurring.

The Alaska Public Offices Commission has the duty to investigate violations of the Campaign Disclosure Law. AS 15.13.030(8). It also has the duty to assist candidates so that they do not advertantly or knowingly violate the law. AS 15.13.030(2). Letters of Admonition are one form of rendering assistance to candidates. They express Commission condemnation of a campaign practice that the Commission considers serious and substantial, and, further, that the conduct is unreasonable.

The standard of care for candidates in accepting contributions has been stated in the current version of the candidate's manual. It provides:

Although you may wish to consult your own attorney on this matter (AS 15.13.122), we can find two problems with this approach.

The first is that AS 15.13.120(a)(6) provides criminal sactions for a knowing acceptance of a prohibited contribution, not a knowing retention of a contribution once the candidate becomes aware the contribution is prohibited. Alaska courts generally apply a strict construction to criminal statutes, and if the Legislature intended to subject candidates to criminal sanctions for a knowing retention of a prohibited contribution it should have expressly said so.

The second problem concerns the months between the act and the time when a candidate becomes aware the contribution is prohibited. Although your attorney may advise otherwise (AS 15.13.122), the staff sometimes strays into principles of hornbook criminal law. One of those has it that no crime is committed unless there is a concurrence of knowledge and acceptance at a single point in time. 21 Am.Jur.2d Criminal Law sec. 129 (1981); AS 11.81.600. An act is not criminal unless accompanied by a conciousness of wrongdong, and persons are not subject to criminal sanctions for guilty thoughts alone. Id.; AS 11.81.610. Knowledge obtained through the results of a staff preliminary investigation may be an independent subsequent event that cannot make an innocent act into a criminal one. Id. at sec. 4; Also see U.S. v. Fox, 95 US 670, 24 L.Ed. 538; Terry v. US, 131 F 2d 40 (8th Cir. 1942); Stern, "Consciousness of Wrongdoing," 1 Ak. L. Rev.1 (1984); Miller, Handbook on Criminal Law, §21 notes 39-41, (1934).

SUMMARY OF PROCEDURES FOR RECEIPTS

To review the accounting procedure, here is how the card system works, and what should be done at each step.

1. Collect the receipts both from the mail and from the direct sources.
2. Determine that all receipts are legally acceptable. Receipts should be divided into three groups:
   a) Receipts and contributions that are clearly legally unacceptable. These receipts should be returned to the contributor immediately.
   b) Receipts that are questionable as to whether or not they are legally acceptable. These receipts may be deposited, but a log should be maintained to determine the work you have performed, or documentation received, to ensure their legallity. Call the Commission staff for assistance.
   c) Receipts that are legally acceptable may be deposited. (original emphasis)

It has been the staff's general position that candidates are the first line of defense against prohibited campaign practices. The candidate should initially take some affirmative efforts to determine the legality of all contributions. In most cases, a single personal check from an individual within the aggregate limitation which appears in all other respects to be normal on its face is all that is required. However, checks in excess of the contribution limit are highly suspect and should call for more intensive investigation with subsequent reporting to the APOC of the efforts made to determine the legality of the contributions.

The staff believes there is no evidence for a showing of a lack of reasonable care by the candidates with respect to acceptance of personal checks from the Quadrant employees. They appeared normal on their face as individual contributions under the present regulatory system.[1]

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[1]This is not to say blind acceptance of a series of over $100 checks at a fund-raising event attended by persons who have known close occupational connections to the Quadrant companies is reasonable future conduct. Proposed 2 AAC 50.357 provides that a person cannot loan or advance money for contributions by agents or employees, and a candidate has an affirmative duty to make some inquiry or acquire documentation showing no prohibited contributions are being accepted by the campaign. Candidates should raise their own concerns and adopt procedures to detect questionable contributions and return those that cannot be determined to be legal.

Frankly, the APOC spends as well as collects a substantial amount processing and disposing of the well thoughtout citizen's complaints that are, in large part, directly drawn from the candidate's Campaign Disclosure Statements. Indeed, a citizen saw the tip of the iceberg in this instance and sought a staff preliminary investigation which indirectly alleged that certain candidates failed, at a minimum, to do their jobs and screen contributions so that reasonable compliance is had with AS 15.13.070. If all the candidates did their jobs in this instance, there would be no cause to complain and this, as well as all other prior matters in this proceeding, would have largely been unnecessary.

The Quadrant Contribution Fund Campaign Disclosure Statement show single checks from the Fund were received by two candidates who have yet to return any excess. They are:

	Fink		Flood
5/31/84	$2,000	7/27/84	$3,000
9/19/84	3,200		
10/01/84	1,000		
Total	$6,200		$3,000
Total Excess	$5,200		$2,000

The staff position in prior matters has been that AS 15.13.070(a) clearly sets forth a $1,000 contribution limit in Alaska, and that a candidate should exercise special care in the handling and reporting of maximum contributions. It would be clear to the staff that if these contributions were not reported at all, civil penalties for substantial noncompliance with the law would be a proper administrative remedy. 2 AAC 50.390(i).

Unlike the employee contributions, the Fund checks exceeded the contribution limit in the aggregate and individually, and do not appear regular on their face. From the written responses, the staff can safely conclude the recipient candidates raised no questions at all regarding the legality or the source of such large campaign contributions and incorrectly assumed through inaction that the Fund checks were proper. Eventhough the group regulatory framework in existence at the time the events took place was not a sterling example of clarity, the staff feels the lack of inquiry and disclosure to the APOC staff at the time they were accepted was unreasonable under the circumstances.

Therefore, the staff recommends this matter be concluded by the issuance of a Letter of Admonition to recipient candidates who have failed to return excessive contributions from the Quadrant Contribution Fund.

ALASKA STAR

The Abood complaint also alleged that candidate Flood received an excessive contribution from an unregistered group, to wit: Alaska Star. The amount of the contributions received and reported by Mr. Flood totalled $2,600.00. The alleged excessive contribution was $1,600.00. The Flood campaign has not, as of yet, been sent written demand to return the excess to Alaska Star. As you will also recall, the Alaska Star matter was resolved by a Consent Agreement, and Alaska Star paid an amount to the state general fund.

The Flood campaign was the lone recipient of the Alaska Star largesse, and none of the individual checks exceeded $1,000.00.

Like the Quadrant matter, the first issue to be addressed is whether there is some evidence upon which to form a belief to conclude Mr. Flood knowingly received an excessive contribution. AS 15.13.070(a); AS 15.13.120(a)(6).

The written responses by Mr. Flood's attorney and investigation of Alaska Star reveals that fundraising tickets were sold to agents of Alaska Star on September 17, 1985. Each of the independent real estate agents with the firm had an account with Alaska Star through which they received their share of commissions on real estate sales. Alaska Star's attorney points out (and we have no reason to doubt), it is a common practice in the real estate industry for a broker or other person who may be in control of the commission account, to advance funds to agents as a loan to be repaid from future commissions. All or most of the political contributions to Mr. Flood by the agents were made on Alaska Star checks from the commission accounts, some of which were earned because the condition for payment to the agents (completion of the real estate sales) had been fulfilled. However, others (more than two) had not received nor were they entitled to commissions because the underlying property sale has not been completed, with the result the advance on future commissions was a loan.

After notice of the complaint, Mr. Flood responded through his attorney he believed at the time that each of the agent's contributions came from their "individual business accounts" that were, presumably, completely vested at the time they were made. He asserts that as far as he was concerned, and after inquiry, each of the agent contributions was individual. Corroboration the campaign was concerned about the Alaska Star contributions came in the form of an attachment filed with Mr. Flood's 30 Day Pre-general Campaign Disclosure Statement which, incidentially, came before the complaint was filed in this instance. Further, an appearance was had in the APOC offices by Ms. Myrna Flood at the time the report was filed (October 11, 1984) explaining that each of the independent agents had purchased fund raising tickets from their individual accounts.

The staff believes it can show from the facts that the candidate received a contribution in the aggregate that exceeded the $1,000 contribution. It is clear that checks were issued, funds were drawn, and then deposited and reported by the candidate. The candidate exercised the minimal dominion and control over the funds to sufficiently conclude that the campaign received or accepted the campaign contributions. However, the crux of the matter is not whether they were in fact received, but whether the candidate knew at the time they were received that he accepted an excessive contribution from a political group that was, in this case, unregistered.

There are three general types of mental states defined in Title 11 of the Alaska Criminal Code which may be applicable to the Campaign Disclosure Law and the various criminal offenses contained in AS 15.13.120. They range in severity from the most to the least culpable. For our purposes, the "Knowingly" element of AS 15.13.120(a)(6) should be synonymous with the definition of "knowingly" in the criminal code,* which provides:

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*The criminal definitions of culpable mental states are expressly limited to crimes contained in Title 11, AS 11.81.900(a), and are not applied by express language to crimes not contained in the criminal code. However, such an interpretation could easily be made when attempts are made to define "Knowingly" in AS 15.13.120(a)(6). The Campaign Disclosure Law does not define "Knowingly," and there is no provision in AS 15.13 that "knowingly" is anything less than what is contained in the criminal code.

> a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that circumstance exists...(or)...aware of a substantial probability of its existence, unless the person actually believe it does not exist..AS 11.81.900(a)(2). (My emphasis)

An actual awareness by the defendant that conduct is wrong is also applied to crimes that provide a "reckless" culpable mental state. A "reckless" criminal act occurs

> ...when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occurr or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situations... AS 11.81.900(a)(3). (My emphasis)

"Criminal negligence" is the least culpable conduct and the easiest for the prosecution to prove. Supra, Stern, at 44. It occurs when a

> ...person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the result must be of such a nature and degree that the failure to perceived it constitutes a gross deviation from the standard of accrue that a reasonable person would observe in the situation. AS 11.81.900(a)(4). (My emphasis)

The difference between "reckless" and "criminal negligence" has been explained in Andrew v. State, 653 P.2d 1063, 1066 (Alaska Ct. App. 1982). Quoting from the Alaska Senate Journal Supp. No. 47 at 142 (June 12, 1978), the Appeals Court stated:

> The test for recklessness is a subjective one-the defendant must actually be aware of the risk. On the other hand, if criminal negligence is the applicable culpable mental state, the defendent will be criminally liable if he "fails to perceive a substantial and unjustifiable risk that the circumstance exists." The test for criminal negligence is an objective one-the defendent's culpability stems from his failure to perceive the risk. Id. (My emphasis)

As a higher standard of culpability, "knowingly," like its lower case counterpart "recklessly," requires the defendant to be subjectively aware the conduct is wrong, and it is a complete defense to a "knowing" violation if the defendant actually believes the conduct is permissable. AS 11.81.610(c). It is more than "reckless" or "criminally negligent" conduct, and, indeed, far exceeds the requirement in civil cases that liability be founded upon ordinary negligence (e.g., both require a gross deviation from the standard of conduct that a reasonable person would observe in the situation.)

As shown in the foregoing, a "knowing" acceptance of an excessive contribution is a relatively serious culpable mental state. It requires the candidate to have subjective knowledge of all constituent elements of the offense. This case, at a minimum, requires the candidate to be aware of the campaign's receipt of a payment in excess of $1,000 which has as its purpose the intent to influence the outcome of an election. This element is relatively simple because the definitions of "candidate," "contribution" and the limit are clearly set forth in the statute, and staff assumes there could be no real dispute Mr. Flood was subjectively aware of these elements at the time the money was accepted by the campaign.

A notice of hearing must also allege the status of the contributor as a political group, and that the candidate was subjectively aware of the group's status at the time. This in turn requires the candidate to know that joint action existed when a broker loans funds to an agent for political contributions. Even if there is sufficient proof Mr. Flood was aware of the nature and consequences of the lender-borrower relation between the broker and agent, it is not clear under present regulations that a candidate would know that acceptance of a contribution in excess of $1,000 in the aggregate from such persons or groups is prohibited, at least by a specific APOC regulation that can withstand a narrow scrutiny in a criminal proceeding.* Therefore, the staff recommends no further criminal action.

The last matter for the Commission to consider is whether a Letter of Admonishment should issue to Mr. Flood for accepting this series of checks from Alaska Star.

In the Quadrant matter, the staff recommended admonishment against a candidate who failed to investigate or make any inquiry whatsoever of a single check in excess of $1,000. It is the staff view maximum contributions are the most important under the act, and a candidate has the affirmative obligation to comply with the minimal bookkeeping functions or obtain written assurances that irregular contributions are proper.

In the Flood/Alaska Star matter, the candidate received a series of checks from a single source, ostensibly from separate vested commission accounts, none of which exceed the $1,000 limit.

In this situation, the staff would recommend Admonishment if the contributions were questionable on their face and the candidiate failed to make inquiry and receive written assurances from the contributor or the APOC staff that the contributions were proper. Eventhough there may be some

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*Proposed 2 AAC 50.356 and 2 AAC 50.357 hopefully provide the specificity necessary for a criminal prosecution.

evidence to support a conclusion the contributions are questionable on their face, the staff finds the candidate complied to a minimum with the duty to investigate, inquire, and inform the APOC staff. In short, Mr. Flood did everything the candidate's manual told him to do and the staff finds no basis for admonishment in this situation.

cc: Senator Mitch Abood
Bill McConkey
Chuck Dunnagan, Esq.
Richard Fossey, Esq.
Attorney General
Tom Fink
Don Smith

MEMORANDUM State of Alaska

TO: Commission Members

DATE: June 13, 1984

TELEPHONE NO:

[8A]

FROM: Theda S. Pittman
Chris Johansen

SUBJECT: Expenditures Before Filing

On Tuesday, November 1, 1983, the Al Adams for State House campaign held a fundraiser at the home of Rita Gittens of Gittens Construction, Inc. The costs for the event were $2,567.43. The event grossed approximately $28,000.00 in contributions. Representative Adams filed his Declaration of Candidacy on November 1, 1983. The invitations for the event were paid for by Ice Block on October 18, 1983 in the amount of $53.00.

The campaign reported a paid expenditure on October 31, 1983 for travel costs in the amount of $391.00 and payment to Adams Management Service of Kotzebue in the amount of $217.25 for sausage. Gittens Construction, Inc. was paid on November 21, 1983 the amount of $1,819.18 for goods and services previously paid by the firm in connection with the November 1, 1983 fundraiser.

Beginning on October 28th and continuing until November 11, 1983, Rita Gittens, Carol Gallant and Gittens Construction, Inc. paid for or presumably incurred costs for fundraiser goods and services. Rita Gittens, Carol Gallant and Gittens Construction, Inc. each contributed $1,000.00 at the November 1, 1983 fundraiser. The Gittens group (Carol Gallant, Rita Gittens, and Gittens Construction) were reimbursed by the Adams campaign on November 21, 1983.

The above facts may disclose a number of violations of the Campaign Disclosure Law. Several potential violation were described in a letter to Representative Adams dated May 7, 1984. Pages 1-4. Represenative Adams' well thought out reply is dated May 28, 1984. Pages 5-11.

Based on the Adams' Year-end Report, voluntary disclosures to date, and Representative Adams' correspondence, staff finds that none of the potential violations of the Campaign Disclosure Law justify criminal referral to the Office of the Attorney General. However, staff finds that the Representative has made mistakes of law and not properly reported his 1983 campaign activities.

Excessive Non-monetary Contributions

The Campaign Disclosure Law defines a "contribution" to include

"... payment by a person other than a candidate or political party, or compensation of the personal services of another person which are rendered to the candidate or political party;" AS 15.13.130(2).

This statutory reference has been further interpeted by the Commission to provide that a business in which the candidate is involved (corporation or partnership) is a "person other than the candidate" and limited to paying campaign debts to the extent of $1,000.00 for each calendar year. Assumed Debts Policy Decision 15.13 - 84.2. Likewise, even the temporary assumption of a campaign debt by someone other than the candidate is counted as a contribution and subject to the $1,000.00 limit.

It is the position of staff that a non-monetary contribution is made when a person other than the candidate pays for and delivers the goods for the campaign's use, regardless of whether the candidate has made a promise to reimburse. AS 15.13.130(2). Staff considers the words "payment" to define when a contribution is made, with the last act necessary to complete the transaction being delivery of the goods for the candidate's use and benefit.

Representative Adams' position is that Gittens Construction, Rita Gittens, and Carol Gallant (hereinafter referred to as "Gittens group") paid for the fundraiser goods as a matter of convenience, and that he stood at all times ready to reimburse them for their costs. He argues that the payment by the Gittens group gave rise to an accrued expenditure for which payment was made within 30 days.

Staff notes the Commission considered a similar position at its August 26, 1981 meeting, wherein the Commission noted the practice of Gittens advancing unlimited campaign costs was irregular. However, the records of the Commission do not show whether the Commission considered the matter a contribution or an expenditure. It is the recent discussions of accrued expenditures, assumed debts, and loans which have clarified this type of situation

Based on the express terms of the contribution definition contained in the Campaign Disclosure Law, it is the position of the staff that a contribution in the amount of $1,819.18 was made at the time the Gittens group paid for the goods and delivered them to the Adams' campaign. Representative Adams' repayment for the costs originally borne by the Gittens groups is not a discharge of an accrued expenditure but a refund of a campaign contribution which, in this case, exceeded the $1,000.00 limit.

Although the mere fact the Gittens group is not in the retail business is not a controlling factor, staff notes Representative Adams' has consistently stated that the informal arrangement arises between "friends" who advance costs as a matter of convenience so that fundraisers can be run in urban centers. Staff can appreciate Representative Adams' logistical problem, especially in light of the financial realities of a rural campaign. However, staff interprets AS 15.13.130(2) broadly to include campaign receipts from whatever source derived and including goods donated to the campaign. Staff cannot, under these circumstances, interpet the Campaign Disclosure Law to allow friends and supporters to circumvent the $1,000.00 limit by donating non-monetary support to the candidate.

Staff considers the prompt repayment of the Gittens' group in this instance not to indicate an intent to circumvent the law, especially when the candidate voluntarily disclosed all details of the transaction. Further, Representative Adams seems to have formulated a sufficient legal argument, although erroneous, that negates an intent to violate the law. However, staff recommends the Commission remind the Gittens group of the requirement to file a "Statement of Contributions" within ten days for any further non-monetary contributions to the Adams campaign.

Pre-Filing Expenditures

AS 15.13.100 prohibits a prospective candidate from making expenditures prior to filing a Declaration of Candidacy unless they are made for personal travel, opinion polls or surveys. It further prohibits others acting on behalf of the candidate from paying or incurring pre-filing expenditures for the benefit of the prospective candidate. Representative Adams' 1983 Year-end Report shows he directly made two paid expenditures on October 31, 1983:

Alaska Airlines - payment for campaign worker air travel, $291.00

Adams Management Service - sausage for fundraiser, $217.25.

Both of the foregoing expenditures occurred prior to filing the Declaration of Candidacy and are impermissable under AS 15.13.100.

Gittens Construction, Inc. also made or incurred expenditures in the amount of $1,819.18 for the benefit of the Adams' fundraiser prior to November 1, 1983.

Representative Adams contends that he agreed to reimburse the Gittens' group prior to filing his Declaration of Candidacy and that no payment was actually made by the campaign until November 21, 1983.

Staff considers it somewhat conclusive that Mr. Adams agreed with the Gittens group prior to filing his Declaration of Candidacy that the Gittens group would pay for and incur expenditures for his campaign's benefit.

It is staff's position that the Gittens' group was Representative Adams agents and acting in all respects as if the Gittens' group were extensions of the future campaign of Representative Adams. AS 15.13.100 prohibits agents of the campaign as well as the candidate himself from incurring or making payment of unauthorized pre-filing expenditures.

Registered Treasurers

AS 15.13.060(a) prohibits persons from making campaign expenditures on a regular basis unless they have registered with the Commission. A general unstated purpose of AS 15.13.060(a) is to insure that those registered with the Commission have some understanding of the recording and reporting obligations under the Campaign Disclosure Law.

The staff is of the position that persons acting on behalf of the candidate or campaign are subject to the same pre-registration requirements as those directly involved in managing the candidate's campaign. Therefore, the staff is of the position that Representative Adams and the Gittens' group failed to register with the Commission prior to paying or incurring pre-filing expenditures.

Proper Identification of Fund-raiser Invitation

The fundraiser invitations were identified properly by Ice Block as evidenced by the copy provided by Representative Adams.

Unreported Monetary Contribution

Representative Adams indicated he received the Cominco-Alaska contribution after the first of the year and, hence, it was not reportable on his 1983 Year-end Report. Such delayed delivery is not uncommon, although staff believes that such contributions should be forwarded directly to the contributor rather than being delivered through an intermediary.

Conclusion

Staff finds that the payments for goods by the Gittens' group was an excessive non-monetary contribution until repayment was made by the Adams campaign. The advance payments were clearly intended to benefit the Adams campaign and are included within the contributions definition. Staff further finds that the Gittens group made excessive contributions to the campaign and that Representative Adams refunded the excessive portions. Further, staff finds that Representative Adams made pre-filing expenditures directly and through those acting on his behalf. Lastly, the Gittens group made and incurred pre-filing expenditures for the Adams campaign and should have been registered as treasurers or deputy treasurers.

Staff recommends the Commission not find probable cause to believe a violation of the Campaign Disclosure Law has occurred, but that the Commission direct staff to admonish Representative Adams against committing further violations.

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☑ 610 C STREET, SUITE 211
ANCHORAGE, ALASKA 99501-3698
(907) 276-4176

☐ JUNEAU BRANCH OFFICE
POUCH CO
JUNEAU, ALASKA 99811-0222
(907) 465-4864

ALASKA PUBLIC OFFICES COMMISSION

May 1, 1985
Telecopy - This sheet plus 6

The Honorable Mitch Abood
Chairman, Senate State Affairs
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Abood and members of the Committee:

At its April 29-30 meeting, the members of the Alaska Public Offices Commission reviewed the April 23, 1985 issue paper written by the law firm of Gross & Burke provided by your office. Following is a summary of their reactions to the questions posed in the papers. I have referenced the questions by subject and individual number.

I apologize for the general lack of background information in the following summary. The Commission wanted to provide the Committee with a written response prior to tomorrow's meeting. Hence, I found it necessary to focus on their decisions without extensive background material.

CONTRIBUTIONS TO CANDIDATES & EXPENDITURES BY CANDIDATES

1. As a group, the Commission presently has mixed feelings about increasing the contribution limitation to $2,000. For the past three years the Commission recommended the increase without success. As individuals, the Commission members have mixed reactions. Some members still feel the increase is appropriate; others would just as soon see the proposal dropped.

2. The Commission continues to support strongly its recommendation that the threshold for disclosure of a contributor's identify be increased from "more than $100" to "more than $250."

3. The Commission disclosure of campaign expenditures continues to be a valid request for information from candidates and political groups. Both the public and campaign contributors have a legitimate interest in the use to which campaign funds are put. The purpose of a campaign expenditure is to "influence the outcome of an election." Donors have the right to information which will allow them to determine whether their funds are being used for the purpose intended.

From a practical standpoint, the reporting activity associated with expenditure schedules is probably the easiest requirement with which campaign treasurers have to cope. Absent the reporting requirement, any well managed campaign would, of necessity, maintain this information. The accurate recording of accrued expenditures and their payment is necessary to avoid unreported contribution activity.

4. It should be noted that it was about five years ago that the Commission discontinued an active effort to request the Supplier of Services reports specified in AS 15.13.040(f) and .110(d). Once the Commission stopped requesting the reports, suppliers stopped filing them. There are no records of a single public protest regarding the the absence of such reports.

It is true that the purpose of the requirement was to give the Commission a tool to monitor whether candidates complied with the spending limits. The U.S. Supreme Court decision striking down those limits obviated the need for the cross-check, except perhaps in individual instances where under-reporting was alleged. The Commission was never staffed at a level which would allow the cross-checks to occur. Since the statutory due date is 30 days after the election, the reports were of little practical use except to create an interesting statistical table.

Information about candidate time buys from radio and television stations is available by federal law in the public files of the broadcast stations. The Commission seldom encounters an investigatory situation which requires information from a supplier; when it does, subpoena power would be used if necessary to obtain the information.

If the requirement were repealed, the Commission may specify in its bookkeeping requirements that a campaign obtain and maintain an itemized listing of services and sub-suppliers when it made a payment to a supplier which included goods and services from other suppliers.

CONTRIBUTIONS TO PACS AND PARTIES AND EXPENDITURES BY PACS AND PARTIES

1. The Commission is aware of isolated instances where individuals have given significant contributions to PACS. The absence of any computerized recordkeeping has prevented any thorough analysis of these statistics by the Commission. However, the Commission shares the general dismay of campaigns and of the public at the ever-increasing costs of running for office. The Commission would support proposals which have a realistic hope of curbing those costs.

2. See number 1 above. The Commission is generally supportive of the need for a strong party system in American democracy. Many years ago when the proposal to exempt parties from the contribution limitation was first advanced, the Commission supported it in the belief that such an exemption would encourage strong political parties in Alaska. So long as parties do not abuse their exemption from the limitation by funneling money dedicated to particular candidates, the Commission will likely continue to support party exemption from the limitation.

3. See number 1 above.

4. The Commission believes circumvention of the contribution limit through "earmarking" is prohibited under the current provisions of AS 15.13. For example, if individual contributor X gives political party Y $500 with the agreement that the funds will go to candidate Z, then a violation of the §.070(d) ban on contributions in the name of another has occurred even though no excessive contribution has been made. If employee X tells employer Y to withold $2,000 from his or her pay and give it to candidate Z, then employee X has made a contribution exceeding the $1,000 limit -- assuming the employee specified a candidate by name and the employer exerted no direction or control over the selection.

5. The issue of "independent" expenditures will always be a difficult one and may never be subject to 100% successful enforcement. The Commission has long understood, based on Buckly v. Valeo, the concept that independent expenditures can not be limited. It has a regulation, 2 AAC 50.351, which works well for explaining the concept of "independence" to a layperson. However, public knowledge that independent expenditures are unlimited has not been widespread and the Commission has had no major case which challenged a Commission ruling on independence.

Statutory criteria for independent expenditures are desirable, but at present the Commission has no specific drafting suggestions. One area would could be explored concerns the individuals who make the expenditures and whether they have any relationship to a candidate's campaign committee. U.S. House and Senate committees have both held extensive hearings on the subject of independent expenditures and may be worth further research.

USE OF CAMPAIGN FUNDS, SURPLUS FUNDS, DEBT REPAYMENT.

1. The Commission recognizes that it would be difficult to define or monitor what expenditures were "legitimate campaign expenditures." Campaigns are creative endeavors and they frequently devise unusual methods of promoting their candidates or their causes. One candidate may need a haircut before a TV appearance; another may field an athletic team. In practice, there have been few examples of direct expenditures out of a campaign which were irrelevant to the campaign process. Sometimes successful candidates who leave their surplus in a campaign account between elections will spend funds periodically for office-related expenses. This causes potential problems with the ban against expenditures before filing, but does not appear to be a particularly offensive use of campaign funds.

2. The Commission feels strongly that it would be appropriate to ban candidates from taking surplus campaign funds as personal income exceeding their own personal contributions. This should be of particular concern from a public policy standpoint since public funds are the source of the Political Contribution Credits. The Commission feels that charitable contributions, holding funds for a future election, or making contributions to a political party should be considered legitimate means of disbursing a surplus. The State would also be an appropriate recipient.

3. The Commission believes it would be appropriate to require that campaigns terminate within a year of the election. The process should require the payment of all outstanding vendor debts and personal contributions. If that is financially impossible, Commission review would be required to determine how much can legally be converted to contributions through forgiveness and to assure that no inappropriate write-offs of debts occur. Candidates should be required to declare, at the time they make their own contributions, whether they intend repayment to themselves for personal contributions. No fund-raising to repay personal contributions should be allowed after the deadline.

The suggestion of one year is a compromise between various suggestions which have been made including prohibiting all fund-raising after the election or requiring termination in 60 days, 90 days, or by the end of the year of the election. The Commission is concerned that post-election fund-raising frustrates the purpose of disclosure before the election, but it feels that allowing no personal contribution recovery is disadvantagous to newcomers attempting to run.

CRIMINAL PENALTIES

The Commission suggests that revision of the criminal section of AS 15.13 could benefit from an anaylsis and comparison with the criminal code which was revised after the Campaign Disclosure Law was enacted. Whether the mental element required should be knowingly, recklessly, grossly neglectful, or willful is a Legislative concern but would be helpful to determine where campaign disclosure violations fit in the overall scheme of Alaska's criminal law.

The Commission would caution against an attempt to establish a complex system of categorizing various potential violations. Within broad public policy guidelines, effective enforcement should allow the Commission's referral process the power to make appropriate differentiations based on specific cases. One of the major reasons a citizen commission is appropriate for the administration of the Campaign Disclosure Law is the fact that those who are subject to the Law have a wide range of experience and acitivity level. A citizen commission is a cost effective way to provide a review process prior to referral to the Attorney General One of the most important functions a citizen commission can perform for the public is to screen out cases which would be an inappropriate use of the public's criminal justice facilities.

Two points of information about the current situation should be noted. Prior to 1980, the Commission operated under the belief that intent was not supposed to be part of its considerations when deciding whether a criminal violation had occurred. In 1980, when the Commission referred Bill Parker to the Attorney General's Office for failure to report contributions, the case was returned to them, with verbal instructions to investigate willfulness prior to making such referrals. The Commission continues to adhere to this advice in criminal referral matters.

The 1980 enactment of a one year statute of limitations in AS 15.56.130

should not be regarded as superceding the four year limit in AS 15.13.120(e). In point of fact, the Election Code had a one year statute in 1974 when the Legislature enacted AS 15.13 with its own separate four year limit. A truncated statute of limitations simply conveys the message that a violation which can be successfully concealed is no longer a violation. Since the terms of Governor, Lt. Governor, and State Senators are four years in duration, the four year statute of limitations is necessary and logical.

CIVIL PENALTIES AND PROCEDURES

1. At present, the statute establishes the maximum civil penalty for a reporting problem based on the per day rate. The other factors listed in the issue paper are items which the Commission takes into consideration in the process of mitigating an appeal. A rigid classification system by statute would be less capable of responding appropriately to the changing circumstances of the various violations.

2. From the Commission's perspective daily fines are working reasonably well and probably do not need statutory amendment unless there is a desire to increase the per day rate. Historically, the Commission took a lenient stance when the Law was new and not well publicized. In the fall of 1983 the Commission adopted a policy which provided for a less lenient approach. The success of that attitude was noticeable almost immediately for those who report under the Lobbying Law. Those who had to pay full fines quickly spread the word among others and late reports are now virtually unheard of among lobbyists or their employers. Unfortunately, political groups and candidates are numerous and not in contact with each other; they have not made the same amount of progress in timely reporting in the 18 months since the Commission adopted its sterner policy.

The Commission is presently working on a revised regulation for civil penalty assessments for Campaign Disclosure. Although the outlines are not complete, it appears there will be no more $1 per day fines and that the full statutory amount of $50 per day will apply to 7 Day Pre-election reports and 24 Hour Reports. The Commission has yet to discuss a staff proposal that would allow lower rates only for municipal campaigns in communities of 5,000 or less.

3. There is already a maximum limit on the total amount of daily fines set by the statute in that there is a per day maximum and a statute of limitations. The Commission would oppose a proposal to allow daily fines to accrue only from the date the Commission notifies someone. That would be an arbitrary because it would depend on the staff's limited resources.

4. The Commission would welcome civil penalties for violations such as the "paid for by," for excessive contributions, and for contributions in the name of another. An awareness of such provisions in other states suggests that $10,000 per violation would be appropriate.

5. In reality, neither the staff nor the Commission assesses the present civil penalty. It is set by the statute. The notice of assessment

merely indicates what the total amount could be. Many people simply pay. For those who do not, AS 15.13.125 is clear about the process of appeal. Under the current law, the respondent receives a notice of the maximum amount and may decide whether to pay or appeal. It would be unnecessarily burdensome on both the respondent and the Commission to require the respondent to appear before receiving notice of the amount with a second appearance necessary to make an appeal. Civil penalties such as those discussed in number 4 would be subject to the hearing process of the Administrative Procedures Act.

6. For violations subject to the flat rate discussed in number 4, the safeguards of the Administrative Procedures Act would dictate the process, as well as the evidentiary rules, the Commission would use. Such is intended to assure due process and limit procedural discretion. One of the major advantages of the limited per day civil penalties for reports is that the citizen commission can mitigate as appropriate to the specific factual circumstance. In effect, the punishment fits the infraction without requiring a candidate or group with few resources to hire an attorney just to write an affidavit or speak to the Commission. The presumptive approach would be very difficult to draft and would likely create much controversy in situations where the Commission would have no discretion to take the facts into account.

7. All of the confidentiality suggestions in this discussion for limiting the Commission or its staff fail to take into account the fact that there are no restrictions on the complaintant. It is the complaintant who initiates contact with the press in these matters, not the Commission staff. A gag order on the agency would also deprive the respondent and the public from any informational statements about dismissals for failure to allege a violation.

PUBLIC FINANCING

In discussing this issue, the Commission simply was unable to endorse the concept. Their major reservations have to do with the fact that a public financing fund arrangement is subject to considerable abuse of public funds, whether intentional or inadvertent. An even larger stumbling block for some of the Commissioners relates to the effect of independent expenditures in campaigns where some candidates have agreed to limits. Under present budget restraints, a public financing system is unworkable.

CONCLUSION

In the course of the discussion, the Commission asked that I affirm their belief that statutory amendments are needed in other subject areas which they listed in their 1985 proposal. Of particular importance is the need to amend AS 15.13.100, by reversing the ban on expenditures before filing and specifying that those who act like candidates are subject to the Law regardless of whether they've filed a declaration; strengthening group

registration and reporting requirements; and banning the use of raffles to fund activity reportable under AS 15.13.

The Commission is hopeful that the Committee will find the forgoing remarks useful and looks forward to further efforts in improving the disclosure laws.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

Theda Pittman

Theda Pittman
Executive Director

cc: Rebecca Burch, Special Assistant
Dept. of Administration

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

AVRUM M. GROSS
SUSAN A. BURKE

(907) 586-2777

April 23, 1985

Dear Committee Member:

During the last two months, we have collected and reviewed a great deal of information concerning the campaign disclosure law and how that law is administered in this state. We are rapidly reaching the point where we can begin drafting revisions to the law. Before we prepare the first draft, however, it would be extremely helpful to discuss with the committee a series of very basic policy issues that have emerged as a result of our initial review.

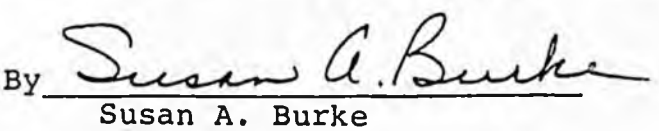
Attached to this letter you will find a series of issue papers. What we have done is to divide the various aspects of the law into a number of broad categories. For each of the categories we have outlined the major provisions of law as they exist today. Using those provisions as a foundation, we have posed a series of issues concerning the law. We would like to take the committee's time to go over these issues one-by-one. Obviously, we do not expect consensus on every point. What we do need, however, is a sense of what is most important to the committee and the basic direction the committee would like us to take on these fundamental issues. Using the comments made at the committee meeting in response to the questions raised, we will draft revisions which reflect as nearly as possible the changes we believe the committee supports. That draft should be ready within a few months and will be presented to the committee at that time.

We would appreciate it if you could review the issue papers and be prepared to discuss them at the committee meeting which Chairman Abood has scheduled for May 2.

Yours very truly,

GROSS & BURKE

By 
Avrum M. Gross

By 
Susan A. Burke

1. Contributions to Candidates and Expenditures by Candidates

2. Contributions to PACs and Parties and Expenditures by PACs and Parties

3. Use of Campaign Funds, Surplus Funds, Debt Repayment

4. Criminal Penalties

5. Civil Penalties & Procedures

6. Public Financing

1. CONTRIBUTIONS TO CANDIDATES AND EXPENDITURES BY CANDIDATES

A. Contributions by Individuals

Under present law individuals are restricted in the amount of contributions they may make to a candidate. Contributions in excess of $1000 are prohibited.

There is no aggregate limit as to how much a particular individual may donate to candidates so long as no single candidate receives more than $1000.

All contributions in excess of $100 to a candidate must be reported by the candidate's campaign.

Contributions in excess of $250 must be reported by the individual making the contribution.

Cash contributions may not be made to a candidate in excess of $100.

B. Expenditures

The act presently provides that campaign expenditures are limited depending on the office sought. That limitation has been ruled unconstitutional. The court ruling does not apply to the reporting provisions of the present law, which require that all expenditures made by a candidate for "advertising in newspapers, on radio or TV, or for publication, distribution or circulation of . . . campaign material" must be reported. Present law also requires that persons or organizations providing certain services, facilities or supplies to a candidate or group must report all payments received in excess of $250. This latter provision, however, has never been enforced by the Commission.

BASIC ISSUES

1. There is some feeling that the amount an individual may contribute to a campaign should be raised from $1000 to some other number. The Commission itself has supported a raise to $2000. Federal law authorizes contributions up to $5000. Should the limit be raised, and if so, to what amount?

2. There appears to be general consensus that the $100 figure, which is the amount that may be contributed without disclosure to the APOC of the contributor's identity, should be raised. The Commission supports a raise to $250. What should be the increase, if any?

3. The law requiring the reporting of expenditures was originally tied to the limitation on expenditures. The reporting requirement is justified now only as a way to check the accuracy of the contribution reports. For instance, if a campaign receives $20,000 in contributions and spends $50,000, the implication is that something is wrong. Is this check a sufficient justification for retaining the expenditure reporting provision?

4. The Commission does not presently enforce the provision which requires certain suppliers receiving more than $250 in payments from a campaign to report the payments received. Is there any justification for continuing this reporting requirement?

2. CONTRIBUTIONS TO PACs AND PARTIES AND EXPENDITURES BY PACs AND PARTIES

A. Contributions

There is no limit under present law on the amount of money that an individual may contribute to PACs and political parties. Under federal law an individual may contribute no more than $5000 to a PAC in a calendar year. There is no federal limit on the amount an individual may contribute to a party.

B. Expenditures (or contributions) by PACs and Political Parties

There is no limit in Alaska on the amount political parties may contribute to candidates. PACs are presently limited in the amount they can contribute to candidates by the same limits that apply to individuals. Specifically, the law states that the limit applies to the amounts contributed to a candidate or spent "on behalf" of the candidate. To the extent that the campaign "expenditure on behalf" of a candidate is limited to $1000, the limit is unconstitutional if the expenditures are independently made and not under the direction of a candidate.

BASIC ISSUES

1. Federal law imposes limits on the amounts individuals may contribute to PACs. Should similar limits be imposed under state law?

2. Should any restrictions be imposed on the amounts individuals may contribute to parties?

3. Present law imposes no aggregate limit on the amounts PACs may contribute to candidates. Is any aggregate limit desirable?

4. Limits on individual contributions to a candidate may be circumvented by making contributions to parties and PACs that are "earmarked" for specific candidates. Under federal law earmarked funds are limited to the same amount as could be contributed directly to a candidate. Is such a limit desirable in state law?

5. Limits on the amounts PACs spend independently "on behalf of a candidate" or the amounts parties might spend on behalf of a candidate are unconstitutional. What kinds of tests should be imposed to determine whether an expenditure is truly independent of a candidate's campaign or whether it is simply an extension of the campaign?

3. USE OF CAMPAIGN FUNDS, SURPLUS FUNDS, DEBT REPAYMENT

There are few statutory provisions regulating the use of campaign funds. Contributions may be spent for political as well as personal purposes.

The disbursement of surplus campaign funds after an election is covered by APOC regulations. These regulations allow a candidate to donate the money to charity, repay contributors, repay personal campaign debts, take the money as income, leave the money in a campaign account, contribute the money to other candidates or groups, or transfer the money to an office allowance fund.

Campaign accounts may be maintained indefinitely as long as the required reports are filed.

BASIC ISSUES

1. It is a common misconception that campaign contributions may only be used for campaign purposes. Many other states do prohibit spending campaign funds for personal purposes, but Alaska has no such restriction. Should spending of contributions be limited to political purposes and, if so, what are the legitimate uses of campaign funds?

2. The federal government and some other states prohibit taking surplus campaign funds as personal income. Should the disbursement of surplus campaign funds be restricted further and, if so, what are the appropriate uses of surplus funds?

3. Campaign accounts can currently be maintained indefinitely. Some states require that all campaign accounts be closed out within

a certain time period after the election. This means that all debts must be taken care of and surplus funds must be disbursed in the appropriate manner within the time allotted. What type of restrictions, if any, should be placed on the repayment of campaign debts (particularly the repayment of those funds contributed to the campaign by the candidate)?

4. CRIMINAL PENALTIES

The current law sets out a number of requirements and prohibitions. "Properly completed reports" must be filed at various specified times both before and after elections. Those reports must contain such information as the identity of contributors, amounts of contributions, and the amounts and descriptions of expenditures. The law prohibits making contributions in excess of established limits, prohibits anonymous contributions and contributions made in the name of another, and prohibits campaign advertisements and literature without including "paid for by" information. Current law makes it a misdemeanor for a person to violate any of these provisions -- failing to file a report on time, filing an incomplete report, making a contribution in excess of the limit (regardless of the amount of the excess), or failing to include "paid for by" information on campaign advertisements and literature. The law makes this conduct subject to criminal prosecution even if the conduct is inadvertent -- except in the single case of accepting illegal campaign contributions, which must be done "knowingly." The maximum penalty upon conviction is not more than one year in jail or a fine of not more than $5000.

BASIC ISSUES

1. Should criminal penalties continue to be provided for any violation under the law, or should criminal penalties be restricted to the most serious kinds of violations? What types of violations are serious enough to constitute criminal conduct?

Should inadvertent conduct continue to be a criminal violation, or should criminal conduct under the law require an element of intent, such as knowledge, recklessness, etc.?

2. Current law does not attempt to classify various types of violations according to their degrees of seriousness. Are some violations more serious than others? (For example, is exceeding the contribution limit more serious than failing to report a contribution? Is exceeding the contribution limit by $1000 more serious than exceeding it by $50? Is failing to file a report that is due one week before the election more serious than failing to file a report due 30 days before the election?) Should the various kinds of violations be classified according to their degrees of seriousness, with separate maximum penalties provided for each degree?

3. Is the current maximum penalty (one year in jail or a $5000 fine) sufficient for the most serious violations, for example, those involving fraud or intent to deceive?

4. AS 15.13.120(e) establishes a four year statute of limitation for bringing criminal prosecutions for violations of the statutes establishing campaign reporting requirements and contribution limits. Should this limitation period be shortened, particularly in light of the one year statute of limitations enacted in 1980 (AS 15.56.130) which is applicable to criminal prosecutions brought for violation under the election code generally?

5. CIVIL PENALTIES & PROCEDURES

Current law (AS 15.13.125) establishes civil penalties for the failure to file "properly completed" reports within the specified time limits. Civil fines may be imposed for each day the delinquency continues of up to a maximum of $10 per day or up to $50 per day, depending on the type of report involved.

Under current law the Commission may impose fines up to the maximum per day, or it may impose lesser fines. After a fine has been imposed against a person, the law permits the person to submit an affidavit to the Commission stating "facts in mitigation." On the basis of that affidavit, the Commission may reduce or waive the fine. However, the law currently provides no standards which the Commission must follow in making these judgments.

There is no provision in the current law for civil penalties for violation of any of the various limits on contributions, for making anonymous contributions, for making contributions in the name of another, or for failing to include "paid for by" sponsorship information in campaign advertisements and literature.

BASIC ISSUES

1. Current law establishes only two classifications of civil penalties -- up to $50 per day for failure to file complete reports of contributions and expenditures that are due one week before the election and up to $10 per day for failure to file complete reports due at various other times before and after an election. These two categories assume that the only factor affecting the seriousness of a violation is time that a report is required to be filed, regardless of whether the violation is intentional or inadvertent. Is the time a report must be filed

the only significant factor affecting the severity of penalties, or should the various kinds of violations be broken down into additional classifications, with appropriate penalties provided for each classification, depending on additional factors such as the subject of the report (contribution, expenditure, identity of group, etc.) or whether the violation was intentional or inadvertent?

2. Are daily fines the best way to encourage compliance with the reporting requirements?

3. Current law allows daily fines to accrue from the date the report was due until the person complies. Extremely high fines are possible in cases where a person has failed to file one or more reports or has omitted information in the report and a long period of time goes by before the Commission discovers the violation and notifies the person of the alleged delinquency. If daily fines are retained, should they accrue only from the date the Commission notifies a person of a complaint or violation? Should there be a maximum limit on the total amount of accrued daily fines that may be imposed?

4. Current law provides for civil penalties only for failure to file certain reports. Only criminal penalties are applicable for receiving or making a contribution in excess of the limits, for anonymous contributions, or for violating the requirement that campaign ads and literature include "paid for by" information. Should civil penalties be provided for these violations?

5. Under current law when the Commission or its staff discovers that a report has not been filed or that a report is incomplete, the staff computes the daily fine and assesses the maximum accrued penalty. The person may then file an affidavit with the Commission containing "mitigating facts," on the basis of which the Commission may reduce or waive the penalty. Should the person have an opportunity to be heard before a fine is imposed?

6. The present law gives the Commission wide discretion concerning the ultimate amount of fines that will be imposed for any violation of the reporting requirements. Should this discretion be limited? If so, there are a number of things that can be included in the law, either individually or in combination. One way of limiting discretion would be to establish a larger number of classifications for the various types of violations in accordance with their degrees of seriousness, and including penalties for each classification. If it is desirable to give the Commission some discretion in the amount of fine to impose in a particular case, then the law could provide a range of fines for each category of violation within which the Commission could choose. If it is desirable to have more certainty in the fines that would be imposed for particular violations, then the law could establish fixed fines, or perhaps "presumptive" fines. How much discretion should the Commission have in determining the amount of a civil fine?

7. Current law is silent on the question of confidentiality of Commission investigations, hearings and deliberations concerning possible violations. It is likely that without specific provision for confidentiality a court would hold that these matters are open to the public. Should investigations, hearings and Commission deliberations concerning complaints and alleged violations be confidential? If so, should the complainant have access to confidential information concerning the progress of the investigation? And when should the proceedings become matters of public record -- (a) after any final determination by the Commission of a complaint or investigation, regardless of outcome? (b) only after a final determination that a violation has been committed? (c) only after a person appeals to the superior court?

6. PUBLIC FINANCING

Public financing has two basic purposes. The first is to provide funds for individuals who want to run for public office so that they may do so free of the pressures of raising money. The second is an indirect way of limiting campaign expenditures. While the legislature cannot impose direct limitations on expenditures by candidates or PACs, it can create incentives for voluntary limits. The legislature can establish a limit for expenditures for various offices and then provide that those who agree to limit their campaigns to those limits will qualify for some sort of public assistance while those who refuse to limit their campaigns will not so qualify.

Several bills have been introduced on the subject of public financing. There are two basic themes. One would be to provide that candidates must limit their campaigns in order for the donors to that campaign to receive the rebate from the state (presently $100) available in present law. The second is some sort of matching program where if a candidate agrees to limit his campaign, the candidate will receive some amount of funds from the state to match what has already been raised up to a specified amount.

Is the desirability of limiting expenditures for campaigns sufficiently great to justify continued or modified public involvement in the financing of campaigns and, if so, on what basis?

SHEE ATIKA, INCORPORATED

330 Seward St., Rm. 207
SITKA, ALASKA 99835
PHONE (907) 747-3539
or 747-3534

February 19, 1986

FEB 24 RECD

The Honorable Edna DeVries, Chairperson
Senate Community & Regional Affairs Committee
Pouch V
Juneau, AK 99811

Subject: Statement of Decision; Municipal Boundaries of the City of Angoon Dated January 19, 1986.

Dear Senator DeVries:

February 6, 1986 Mr. Nelson Frank and myself participated in a Public Hearing pertaining to annexation to the City of Angoon. The Hearing got off to a late start at 3:50 PM and was monopolized bv individuals testifying to provisions of fact and law regarding a proposed Ketchikan annexation. At 5:10 PM the moderator announced that testimony relative to the remaining issues, including the City of Angoon must be kept short, and one person from each community would be allow to speak. Mr. Frank, representing Shee Atika, was allowed to testify at approximately 3:27 PM and was cut short by the moderator at approximately 3:30. Therefore, this letter is submitted to provide additional testimony and concern pertaining to the statement of decision issued by the Local Boundary Commission relative to the proposed annexation of properties into the City of Angoon.

Shee Atika recommends and concedes that the lands in Section 32, T. 50 S., R. 68 E.; Sections 5, 8, W½ of 9, N½ of 16, N½ of 17, T. 51 S., R. 68 E.; and the area of Killisnoo Island T. 51 S., R. 67 E. could be justifiably annexed into the City of Angoon. We vehemently oppose annexation of additional lands located on Admiralty Island. This opposition is based upon provisions of Alaska Statute 29.68; protection is provided in the Alaska National Interest Land Conservation Act of 1980 (ANILCA), and the lack of demonstrated need and purpose to annex the remaining lands at this time. We feel it has been clearly demonstrated that the City of Angoon would accrue no measurable benefits, but would incur extensive liability from the proposed extensive annexation. In fact, the report and recommendations of the Department of Community & Regional Affairs supports our position pertaining to the lack of necessity for the massive annexation as proposed by the City of Angoon in their petition of August 7, 1985, and the subsequent recommendations and decision by the Local Boundary Commission.

Clearly, the property proposed for annexation is rural in character (not urban), is primarily composed of Federal lands, and there has not adequately

been demonstrated that annexation would provide additional protection and or benefit to the residents of the State of Alaska, or even the City of Angoon. In the findings of fact, it was pointed out that:

1) The area most likely to be impacted by development in the near future is Killisnoo Island.

2) Development rights to the lands 660 feet above mean high tide in Mitchell, Kanalku, and Favorite Bay are regulated subject to public law 96-487, Section 506 point (a) (3) (C), which strictly limits development and activities on this land.

3) Any law enforcements services necessary in Hood Bay currently fall under the jurisdiction of the State of Alaska and the U.S. Forest Service. Finding affect number 7 implies the desire for exclusive subsistence use by the City of Angoon. State subsistence regulations and provisions of ANILCA clearly rule contrary to this necessity.

4) The U.S. Forest Service Admiralty Monument is the largest land holder within the area proposed for annexation. Federal ownership precludes any additional tax base pertaining to these lands.

5) Most of the territory proposed for annexation contains very steep slopes and is fairly remote. Growth is likely to occur on Killisnoo Island.

6) "Growth" maybe attributed to a "spilling over" of present city population. A "spilling over effect" infers, as has been demonstrated by recent population census, that a eminent population growth is not anticipated.

7) Fire services are provided by the Federal Government for all federal lands and for Kootznoowoo corporate lands and Mitchell, Kanalku, and Favorite Bay.

8) Findings of fact indicate the city may be called upon to provide emergency services and rescue and police protection to the Killisnoo Harbor area. The very findings of fact indicate that this is a nonconclusive statement and has not proven to be a demonstrated need.

9) The potential for private or public development in the terrority will determine the need by the city to exercise municipal planning authority. Again, the word "potential" indicates that the need has not been demonstrated but maybe necessary at some undefined point in the future.

10) The petitioner list anticipated development as cold storage facilities, roads, etc.. Considering the proposed development would take place within the Admiralty Island National Monument, a Federal Environmental Impact Statement would be required prior to any such development. Additionally, the economic basis has not been established or demonstrated to a degree necessary to support such development.

11) Item 20 of the findings of fact indicates a desire for exclusive subsistence use by the City of Angoon. ANILCA and ANCSA provide for guaranteed subsistence use. However, Exclusive use of subsistence resources by anyone community has not been awarded by provision of Federal or State Law.

12) Item 23 of the findings of fact states that "there is a reasonable likelihood of future growth and development will occur within the vicinity of Angoon. However, it is anticipated that this development will be limited to Killisnoo Island, Killisnoo Harbor, Hood Bay, and Favorite Bay." Quite clearly, it should be noted that Killisnoo Island in Favorite Bay are the primary development regions anticipated for the municipality of Angoon long before the necessity for any regulated development of Hood Bay.

Additionally, it should be noted from the petition by the City of Angoon that a tax basis within municipality is not available to support the anticipated additional services to these outline areas. Therefore, this implies that all services must be provided with the aid of Federal and State Funds, and are thus dependant upon continued appropriation of said funds to maintain the existing level of service let alone to consider expanding service to other areas.

For the above reasons, Shee Atika, Incorporated is opposed to the proposed boundary adjustments and recommendations by the Local Boundary Commission pertaining to the municipality to Angoon. Legally, logically, and based upon defined and demonstrated need, we find that the commission has erred in it's statement of decision and we recommend that the decision be reconsidered with full consideration giving to recommendations from the Department of Community & Regional Affairs, balanced with the demonstrated necessity for municipal Boundary adjustment, while discounting the perceptions of certain municipal residents who feel the regulation and annexation may be necessary and prudent.

Sincerely,

Roger D. Snippen
President/C.E.O.

RDS/eaw

cc The Honorable Peter Goll, Chairperson/Senator
House Community and Regional Affairs Committee
Pouch V
Juneau, AK 99811

The Honorable Richard I. Eliason, Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

Helen Clough, Monument Manager
Tongass National Forest
Admiralty Monument
P.O. Box 2097
Juneau, AK 99803

cc Elizabeth Cudra, Attorney
Robertson, Monagle, Eastaugh & Bradley
P.O. Box 1211
Juneau, AK 99802

The Honorable Edward J. Gamble, Sr
Mayor, City of Angoon
P.O. Box 189
Angoon, AK 99820

Mr. J.A. Rynearson, Vice President
Alaska Pulp Corporation
P.O. Box 1050
Sitka, AK 99835

LAW OFFICES OF
ZIEGLER, CLOUDY, KING & PETERSON
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

AREA CODE 907
225-9401

ROBERT H. ZIEGLER, SR
C. L. CLOUDY
EDWARD G. KING
JOHN W. PETERSON
CHRYSTAL SOMMERS BRAND
ANNE M. PRESTON

A. H. ZIEGLER
(1915-1972 (DECEASED)

February 20, 1986

The Honorable Edna B. DeVries
Chairman, Senate Committee on
Community and Regional Affairs
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: Estate of Hans J. Furuseth
Our File 15.023.17

Dear Senator DeVries:

It was our hope that a member of the Ketchikan delegation to the Alaska State Legislature would introduce a resolution in favor of the Furuseth Estate. However, I have recently been apprised of the fact that the deadline for private bills has past. I am therefore now writing you to request that your committee introduce a resolution opposing the proposed annexation. Annexation at this time will only serve to increase the Estate's property taxes from approximately $8,000.00 per year to approximately $40,000.00, while the property will not receive a corresponding benefit in the form of city services for several years.

Thank you again for your help in this matter and for considering our request, please contact me if you have any questions.

Very truly yours,

ZIEGLER, CLOUDY, KING & PETERSON

By Trevor N. Stephens
Trevor N. Stephens

TNS:sb

LAW OFFICES OF
ZIEGLER, CLOUDY, KING & PETERSON
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

AREA CODE 907
225-9401

ROBERT H. ZIEGLER, SR
C. L. CLOUDY
EDWARD G. KING
JOHN W. PETERSON
CHRYSTAL SOMMERS BRAND
ANNE M. PRESTON

A. H. ZIEGLER
1915-1972 (DECEASED)

FEB 21 RECD

February 19, 1986

The Honorable Edna B. DeVries
Chairman, Senate Committee on
Community and Regional Affairs
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: Estate of Hans J. Furuseth
Our File 15.023.17

Dear Senator DeVries:

I would like to take this opportunity to thank you and the other members of the Senate and House Community and Regional Affairs Committees for the opportunity to testify in opposition to the City of Ketchikan's annexation of the Gisse-Furuseth property. Should a resolution be introduced in support of our position it is our hope that the committees will view it favorably.

In addition, and independent of the merits of our particular case, we would request that the Alaska Legislature at some point seriously review the annexation by legislative review procedure. The current statutes and regulations make it very difficult, if not impossible, to successfully defend against an annexation petition. In fact, they have created a process in which petitions receive city council and local boundary commission approval in rubber stamp fashion.

The following facts from the Gisse-Furuseth case demonstrate many of the shortcomings of and deficiencies in the present system:

1. The city council directs the city staff to prepare annexation petitions;

2. Property owner receives first notice of proposed annexation only three days prior to date on which the city council is to consider the petition;

3. City council approves the petition it had requested without any facts being submitted in its support;

4. Community and Regional Affairs holds public hearing, property owner not provided with personal notice, no members of the public are present;

5. Local Boundary Commission holds public hearing, only three board members present, property owner's representative appears, testifies, and provides witness testimony opposing annexation, the city provides no witnesses and no factual support for its petition. Local Boundary Commission defers decision until its December meeting;

6. January 22, Local Boundary Commission presents approved petitions to the Legislature, starting 45 day period; and,

7. February 3, 1986, property owner receives local boundary commission's formal written decision, notifying the property owner that petition had been approved and that they could appear at a February 6, legislative hearing.

8. February 6, 1986, representative of property owner appears before Joint House and Senate Committee on Community and Regional Affairs. Property owner presents testimony as to the parcel's topography, marketability, and the extreme adverse economic impact of annexation. City again reasserts its general conclusions without providing factual support demonstrating a need to annex this property now. Fifteen minutes is alloted for in-person testimony, representative is present before the Joint Committee for nearly an hour and a half.

In light of the above, I respectfully submit the following recommended changes to the relevant regulations:

1. That timely personal notice be provided to all affected property owners of any and all hearings or meeting conducted by city or state elected, appointed, or administrative bodies concerning the annexation;

2. The Legislature evaluate its role as the only non-judicial body reviewing Local Boundary Commission decisions. With the State experiencing an economic slump due to declining oil revenues and depressed timber markets it is conceivable that similar property owner contests will increase in the near future. Under the present procedures the legislative committees do not appear to have the time and pertinent information to thoroughly review many Local Boundary Commission decisions;

3. An express burden of proof standard should be formulated for the Local Boundary Commission and city councils. Where a city proposes to annex Parcel A, and Parcel A's owner opposes annexation, Parcel A should be presumed unannexable and the burden must be on the city to factually prove that it is annexable under the regulations;

4. An abuse of discretion standard of review for the Local Boundary Commission in reviewing the city council's action on a petition. The hearing before the Local Boundary Commission should be on the record from the city council meeting rather than de novo. This approach would require the city to factually support its petition from the very beginning, and will prevent unfair surprise to a contesting property owner at the Local Boundary Commission and legislative hearings;

5. An abuse of discretion standard of review for the Legislature in reviewing Local Boundary Commission action. The legislative hearing should be on the record from the Local Boundary Commission hearing rather than de novo. This standard will simplify and streamline public testimony and the Legislature's scope of inquiry, and prevent unfair surprise to a contesting party, for example, we learned for the first time at the legislative hearing that the Gisse-Furuseth parcel was considered annexable because it was "urban," without notice of this allegation we were unable to prepare a response; and,

6. The Local Boundary Commission must be required to give timely notice of its decisions and of the property owner's right to appear before the Legislature.

Thank you again for the opportunity to present our case and for your consideration of the points raised herein.

Very truly yours,

ZIEGLER, CLOUDY, KING & PETERSON

By Trevor N. Stephens
Trevor N. Stephens

TNS:sb

cc: Senator Frank Ferguson
Senate Committee on Community
and Regional Affairs
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Senator John B. Coghill
Senate Committee on Community
and Regional Affairs
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Senator Vic Fischer
Senate Committee on Community
and Regional Affairs
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Senator Arliss Sturgulewski
Senate Committee on Community
and Regional Affairs
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Senator Robert H. Ziegler, Jr.
Senate Committee on Community
and Regional Affairs
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Official Business

Senator Edna DeVries, Chairman
Members:
Senator Ferguson, Vice Chairman
Senator Coghill
Senator Sturgulewski
Senator V. Fischer

Pouch V
Juneau, Alaska 99811

February 1, 1986

To: C&RA Committee

From: Edna DeVries, Chair

Subj: SB 356 -- Revision of Campaign Financing Laws

As you know, Senate State Affairs has been working over the interim on a revamp of APOC legislation; that bill has beer introduced as SB 356--47 pages in total--it has a referral to C&RA.

I am now sending out notice to all of the Mayors and Council persons of this bill and its changes so that they can review it.

I believe as you do that this much needed legislation should be acted on this Session and I request that you become familiar with it so that a minimum amount of time will be spent on it when it passes out of State Affairs.

As of today (January 31), State Affairs is on page 15 of the bill, working on final revisions. If you would like to meet with Senate State Affairs, we can notify you of the next work session on the bill---tentatively scheduled for Monday, Februaıy 3, at 1:30 p.m.

cc: Senator Mitch Abood