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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

SUBJECT: Annulment of regulations (SB 401)

TO: Senator Mitchell Abood

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

You have asked whether the legislature may reinstate a previously adopted regulation rather than just annulling the regulation that replaces it. Under AS 44.62.320 the legislature is specifically authorized to annul a regulation, but has no power to adopt or reinstate a regulation. The section was considered by the court and held unconstitutional in A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980). The basis for the decision is the failure to follow the constitutionally prescribed method of enacting law by resorting to a concurrent resolution for the annulment, so the legislature retains the power to annul regulations by law. The court in that case stressed the constitutionally defined mechanics of legislation as the form that must be used by the legislature if an act is to have the force of law. The court stated

Of course, when the legislature wishes to act in an advisory capacity it may act by resolution. However, when it means to take action having a binding effect on those outside the legislature it may do so only by following the enactment procedures. (Id at page 773, emphasis added)

A regulation does have the force of law, in that it has a binding effect. Consequently, while the legislature may delegate to an executive branch agency the power to adopt regulations, it may not adopt regulations itself, because the method whereby a regulation is adopted does not conform to the constitutionally mandated procedures for enacting legislation. If the legislature wishes to preserve the effect of a regulation that has been repealed or amended by

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an agency, the legislature may always incorporate the provisions it wishes to preserve into statute. A statute, of course, has priority over any inconsistent regulation. (AS 44.62.030)

TBC:csh
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POSITION PAPER
SB 401

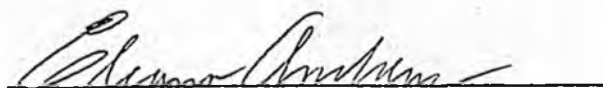
This legislation annuls 34 administrative regulations promulgated by the Alaska Public Offices Commission in accordance with the provisions of the Administrative Procedure Act (AS 44.62). The specific regulations to be annuled include all long-standing and newly-revised regulations, twenty-nine in number, "[N]ecessary to implement and clarify the provisions of" AS 15.13, Alaska's Campaign Disclosure Law. AS 15.13.030(10). The remaining five regulations annuled by the bill are general provisions, procedural in nature, which are also applicable to AS 24.45, Regulation of Lobbying, and to AS 39.50, Conflict of Interest. The latter regulations include the Commission's procedures for handling complaints, preliminary investigations, hearings, and advisory opinions.

These changes would affect approximately 200 state candidates, 350 municipal candidates in 24 municipalities, over 250 political groups, and their major contributors. Candidates, groups, and contributors desiring to comply with AS 15.13 would be unsure of their responsibilities and would swamp the Commission with anxious inquiries. Those desiring to operate unfettered by the requirements of Alaska law would claim they didn't know their actions were improper.

With the 1986 campaigns well underway, the Commission would be required -- in order to assist those campaigns and in order to comply with its enabling legislation -- to publicize its intent to adopt Campaign Disclosure regulations and then to undertake the adoption of emergency regulations. Since emergency regulations are effective only for a short period of time, a notice of intent to adopt permanent regulations would also be undertaken as soon as the emergency action was complete. The process would require 6-9 months and additional funding due to the size of the task and the requirements of the Administrative Procedures Act.


Exec. Dir., Public Offices Commission

2/18/86
Date


Commissioner Eleanor Andrews
Department of Administration

2/18/86
Date