H B 327

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 327

Campaign Contributions

Received May 2, 1989
by Reps. Finkelstein, Ulmer, Brown, and Koponen

Heard January 31, 1990
Heard February 8, 1990
Heard February 13, 1990

Adopted CSHB 327 (SA) February 13, 1990

Passed Out of Committee February 13, 1990
3 Do Pass
2 No Recommendation
1 Do Not Pass

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HB 327: Campaign Contributions

HOUSE COMMITTEE REPORT

(7)
Date Referred: May 2, 1989 FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered: HB 327

HOUSE BILL NO. 327 [CAMPAIGN CONTRIBUTIONS]
"An Act relating to contributions to a campaign for public office."

RECOMMENDATIONS:
[X] be replaced with CSHB327 [ ] the same title
[ ] have attached amendment(s) [X] a new title
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)

[X] fiscal impact AFOC [ ] fiscal note(s) _____
[ ] zero fiscal note _____ [ ] zero fiscal note(s) _____
[ ] zero with analysis _____ [ ] zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
Bruce Henley		✓	
Jim Rudecki You are making it harder for any individual to run for office or cancel.	✓		
Eileen P MacLean		✓	

Chairman's Signature

Item 2

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERS
PUBLISH DATE : 1/4/90

FISCAL NOTE

REQUEST:

Revision Date: 1/4/90
Title : An act relating to contributions to a campaign for public office
Sponsor : Rep. Finkelstein, et. al.
Requestor :

Agency Affected : AK Pub. Offices Commission
BRU :
Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	9.0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	9.0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	9.0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	9.0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	1	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

SEE ATTACHED NARRATIVE

Prepared by : Karla L. Forsythe, Executive Director
Phone : 276-4176
Division : Alaska Public Offices Commission
Date : 1/4/90

Approved by Commissioner : Burke Riley, Chair
Date : 1-12-90
Agency : Alaska Public Offices Commission

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(les)

HB 327 NARRATIVE

This measure would change AS 15.13, the campaign disclosure law, in several ways:

- It would decrease the $1,000 contribution limit to $500.

- It would incorporate into law specific ways to dispose of a campaign surplus.

- It would extend the 24 hour reporting requirement to days 8 and 9 before an election.

- It would require candidates with a surplus to file a campaign disclosure report annually.

The commission believes there would be a modest but measurable impact on its workload, primarily stemming from the decrease in the contribution limit. This change will generate many questions.

In order to mount a publicity campaign to advise those affected of this change, and to make parallel changes in commission regulations, forms, and manuals, the commission would require the contractual services of a half-time administrative assistant, Range 12, for six months. It is assumed that this measure would become effective after the 1990 elections, but sufficiently in advance of the 1991 elections so that municipal candidates could become familiar with its provisions (possibly March, 1991). It is anticipated that the administrative assistant would perform duties from December 1990 through May, 1991.

The costs of reprinting the statute and ongoing interpretation questions related to this section could be absorbed with existing resources.

Item 3

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

REPLY TO:

☑ 2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176

☐ Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

January 17, 1990

Representative H. A. "Red" Boucher, Chair
House State Affairs Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Boucher:

I am writing with regard to HB 327, an act relating to contributions to a campaign for public office, which is presently before the House State Affairs Committee.

The commission reviewed this measure at its November, 1989 meeting. A majority of members favor some of the changes which would be accomplished by this measure, but disagree with some of the other provisions.

The bill would decrease the current $1,000 campaign contribution limit to $500. A majority of commission members favor retaining the limit in existing law.

The bill provides that an individual who accepts campaign contributions may not convert surplus campaign funds to personal income at any time. A majority of commission members support this concept. However, the bill would also incorporate into law several provisions relating to use of surplus funds which are similar to provisions presently contained in commission regulations (2 AAC 50.400).

As committee members may be aware, the commission is in the process of reviewing its regulations for possible revisions. Preliminarily, the commission is of the view that its regulations should be changed to provide that any campaign surplus should be returned pro rata to contributors, or donated to a charitable institution. Moreover, the commission is of the view that a contribution from a candidate's present campaign to a candidate's future campaign is a contribution from a controlled group, and therefore is limited to $1,000 under AS 15.13.070(a) and AS 15.13.130(4).

Although the commission has not reached a final conclusion about how surpluses should be addressed in a revised regulation, and welcomes comments from all interested persons as it examines this issue, the commission generally favors more limited ways of disposing of surpluses than this bill would authorize.

In section three, the bill extends the current 24 hour reporting requirement to days 8 and 9 before the election. The commission supports this provision, which would close a gap in pre-election reporting.

Finally, section 4 of the bill provides that a candidate who has funds in excess of debts during a campaign shall continue to file a report each December 31. The commission favors a provision requiring campaign accounts to be closed as of December 31 (with contributions not to be accepted after the election), rather than a continuing reporting requirement.

In addition to these substantive concerns, the commission suggests one wording change.

In Section 1, at line 13, existing statutory language ("on behalf of or in opposition to the competing candidates") has been deleted, thereby providing that no more than $500 can be contributed to a candidate.

With the elimination of these words, it is possible that persons opposing a single candidate could establish a group and fund it with unlimited contributions. This problem could be avoided by retaining the reference to contributions in opposition to a candidate.

With regard to fiscal impact, the commission believes that changing the law to establish a $500 contribution limit would have a modest but measurable impact on its workload, justifying a modest fiscal note. A fiscal note outlining the possible impact is attached.

Thank you for your consideration of these comments. If you or other committee members have any questions, please let me know.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

Karla L. Forsythe
Executive Director

Attachments

cc: Representative David Finkelstein
Representative Fran Ulmer
Representative Kay Brown
Representative Niilo Koponen
APOC Members
APOC Senior Staff
Bob Evans, Office of the Governor
Sioux Plummer, Special Assistant, Dept. of Administration

Item 4

Alaska State Legislature

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

February 7, 1990

To: House State Affairs Committee members

Fr: Rep. David Finkelstein

Re: New committee substitute for HB 327, relating to campaign financing rules

The new committee substitute would make the following changes to our campaign financing laws:

Section 1. Exempts municipal candidates from reporting requirements if they raise and expend less than $1000.

Section 2. Candidates may not accept contributions after December 31 of the year of the election unless they refile for office.

Surplus campaign funds may not be converted to personal income; five alternative uses of such funds are allowed.

Candidates shall close campaign accounts by Jan. 12 of the year after the election, and submit their final report by January 31.

Section 3. Corporations and labor unions are excluded from making contributions to candidates. Groups may not contribute more than $1000 to parties.

This section also would limit the amount an individual could contribute to his/her personal campaign to a maximum of $1000. (Rep. Boucher's proposal)

Section 4. State and municipal funds could not be used in elections, except in an informational and non-advocacy role.

Section 5. Same as Section 3.

Section 7. Removes the loophole which allows contributions over $250 to be made eight and nine days before an election and not be reported until after the election.

Section 8. Establishes a civil penalty of not more than $250 for failure to identify communications ("Paid for by..." tags).

WA. PDC
Items

PUBLIC DISCLOSURE LAW RELATING TO USE OF FACILITIES IN CAMPAIGNS

RCW 42.17.130 Forbids use of public office or agency facilities in campaigns. No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency: *Provided*, That the foregoing provisions of this section shall not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency. [1979 1st ex.s. c 265 § 2; 1975-'76 2nd ex.s. c 112 § 6; 1973 c 1 § 13 (Initiative Measure No. 276 § 13).]

WAC 390-05-271 General applications of RCW 42.17.130. (1) RCW 42.17.130 does not restrict the right of any individual to express his or her own personal views concerning, supporting, or opposing any candidate or ballot proposition, if such expression does not involve a use of the facilities of a public office or agency.

(2) RCW 42.17.130 does not prevent a public office or agency from (a) making facilities available on a nondiscriminatory, equal access basis for political uses or (b) making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency. [Statutory Authority: RCW 42.17.370(1). 80-02-055 (Order 80-01), § 390-05-271, filed 1/17/80; 79-02-056 (Order 79-01), § 390-05-271, filed 1/31/79.]

WAC 390-05-273 Definition of normal and regular conduct. Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17.130, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use. [Statutory Authority: RCW 42.17.370(1). 79-02-056 (Order 79-01), § 390-05-273, filed 1/31/79.]

Lowell Champagne

A Presentation By
Graham E. Johnson, Executive Director
Washington State Public Disclosure Commission
To The
Washington State Association of Municipal Attorneys
Regarding The
Prohibition On Using Public Facilities To Assist Election Campaigns
Chelan, Washington October 28, 1988

Without question, RCW 42.17.130, the provision of the Public Disclosure Law that prohibits the use of public facilities to assist in election campaigns, has generated more work for the Public Disclosure Commission and its staff than all of the rest of the Law combined. Almost from the day of its inception (January 1, 1973), the Commission has been confronted with interpretive and enforcement issues regarding this section. Responding to the questions and issues has required extensive research into legal roots of the section. What I will do in the next few minutes is review with you what our research has shown so that you can have a clear understanding of why the Commission takes the position it does on the various matters that come before it.

One thing we learned early in our studies is that Washington's statutory provision is unique. No other state seems to have a provision quite like it. But we found quite a bit of case law on the subject, suggesting there are deeper, underlying principles involved.

As we reviewed the case law we saw that most litigation was based on constitutional provisions guaranteeing citizens free elections or prohibiting use of public resources for private purposes. In this state's Constitution we have Article 1, Section 19 saying:

> "All Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

The statutory provision in Washington law is simply an elaboration on this constitutional expression.

The case law, though not extensive, consistently -- and firmly -- says campaigning with public resources is prohibited. Notable among the cases are State Ex Rel. Port of Seattle v. Superior Court (1916) 93 Wash. 267, 160 P.755; Mines v. Del Valle, (1927) 201 Cal. 273, 257 P. 530; and Citizens to Protect Pub. Funds v. Board of Education (1953) 13 N.J. 172, 98 A.2d 673. The expressions of all of these decisions are culminated in Stanson v. Mott (1976) 551 P.2d 1. This decision has had the greatest influence on our thinking.

The message in the case law is that government will not interfere in elections. Interference occurs when government officials use resources in their care and custody, resources which belong to all the people, to favor one side or the other of any ballot question. We do not believe, however, that the prohibition was ever intended to muzzle public officials. Citizens must hear of problems and proposed solutions from the people they've elected to hold positions of public trust and responsibility. It would be inconsistent with the principles of open government to suggest otherwise.

The Stanson case, while discussing, with approval, the constitutional protections, is decided primarily on another principle of law: A public agency can only spend its funds in accordance with clear and explicit legislative authorization. You can do only what you're legally authorized to do. Drafters of the Disclosure Law provision spoke to this in another way. The statute does not prohibit "...Activities which are part of the normal and regular conduct of the office or agency."

"Normal and regular conduct." An interesting phrase. Virtually every matter that has come before the Commission has required an examination of that caveat.

Legal opinions from our assistant attorneys general tell us that "normal and regular" means "lawful and usual." The activity must be authorized by statute, resolution or other appropriate enactment, and it must be part of the conduct usual for the official or agency, not a one time occurrence. The authorization, it must be noted, has to come from another (higher) source. You cannot give yourself powers not granted you by some other body. The legal opinions were the basis for WAC 390-05-273, the rule the Commission adopted in 1979 defining "normal and regular conduct."

Occasionally have we dealt with a situation involving a candidacy, but the vast majority have involved ballot propositions. Most of them have been school levies or bond issues. Schools, typically, will send a periodic newsletter to every household in the district. Many send them out several times during the year. One will usually appear just before a levy or bond issue vote. A disgruntled citizen will file a complaint with us, causing us to investigate the matter and ask that inevitable question: "Is this mailing part of the 'normal and regular' conduct?"

School districts have clear statutory authorization for disseminating information to citizens. RCW 28A.58.610 says:

> "The board of directors of any school district shall have authority to authorize the expenditure of funds for the

purpose of preparing and distributing information to the general public to explain the instructional program, operation and maintenance of the schools of the district: Provided, That nothing contained herein shall be construed to authorize preparation and distribution of information to the general public for the purpose of influencing the outcome of a school district election."

Other units of government don't have anything similar to this language to rely on or guide them, but the Commission has operated with the belief that they have a responsibility and an inherent authority to communicate with the electorate about the maintenance and operation of the agency or jurisdiction.

Even with clear statutory authorization there is still more analytic work to do. For help we can again look to the Stanson case. At page 12 see the following:

> "[14] Frequently, however, the line between unauthorized campaign expenditures and authorized informational activities is not so clear. Thus, while past cases indicate that public agencies may generally publish a 'fair presentation of facts' relevant to an election matter, in a number of instances publicly financed brochures or newspaper advertisements which have purported to contain only relevant factual information, and which have refrained from exhorting voters to 'Vote Yes,' have nevertheless been found to constitute improper campaign literature....In such cases, the determination of the propriety of the expenditure depends upon a careful consideration of such factors as the style, tenor and timing of the publication; no hard and fast rule governs every case."

"Fair presentation of facts"; "style, tenor and timing." These and other similar words and phrases, such as "balanced presentation", "equal access" and "non-discriminatory", formed the basis for WAC 390-05-271, a Commission rule regarding the general application of RCW 42.17.130, and is the criteria the Commission uses in working through real or hypothetical situations coming before it. A discussion of these terms can be found in PDC Declaratory Ruling No.1 (11/15/1977).

It is said that in politics timing is everything. The timing of a particular activity is a significant element in the "normal and regular" criteria. An activity that may pass the test at one point in time may flunk the test at another time. The Legislature has established a June 30 cut-off date for mass mailings by members to constituents. This was done several years ago in response to criticism that such mailings made closer to the Fall elections are intended to assist in the re-election of incumbents. The Commission believes the cut-off is realistic and has honored it.

In PDC Declaratory Ruling No.2 (10/23/1979), the Commission considered the late-September mailing of a budget questionnaire by a county council member up for re-election that Fall. While the central issue was the style and tenor of the cover page, the Commission said the timing of this particular piece was a concern, too. The Commission did say, however, "We do not believe that RCW 42.17.130 was intended to prohibit any communications during an election campaign; however, communications during that period must be subjected to close scrutiny. Such a communication must be directly and necessarily related to the performance of the official's duties and responsibilities. It must not draw undue attention to the candidate."

There are provisions of Washington law that authorize advocacy at public expense. Chapters 29.80 and 29.81 RCW direct the Secretary of State to publish the state Candidate's and Voter's Pamphlets. The sections of these chapters assure opportunity for equal access and balanced presentations.

Added to the RCW's in 1984 is Chapter 29.81A, authorizing publication of Local Voters' Pamphlets. I call this new chapter to your attention and urge your consideration of it as a way by which municipalities can legally spend public money to convey information about candidates and ballot measures plus arguments advocating approval and disapproval of such measures. The citizens of this state have high regard for the state-level voter's pamphlet. I'm confident they will see publication of a Local Voter's Pamphlet as a welcome and responsible use of their tax dollars.

We've been talking about the dissemination of information. Let's shift our focus. The statute prohibits the use of "facilities" to assist campaigns. "Facilities" are defined to include, but not be limited to:

> "...use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency...."

This doesn't mean that campaign committees or political party organizations can't meet in city hall or the library. Chambers and meeting rooms are often used for meetings by citizen groups. They're usually built for that purpose. The Commission has not taken exception to campaign groups and party organizations meeting in the facilities so long as use is made available on a non-discriminatory, equal access basis. If you allow the proponents of the city swimming pool bond issue to meet in city hall you must allow the opponents to meet there, too. And if you

charge one group rent, you must charge the other group at the same rate.

The use of machines, postage, vehicles, etc. is a different story. We know of no general authority for public agencies to rent their equipment for non-public endeavors. A postage permit is usually granted to an entity for its own use. Reimbursing an agency for copies made on duplicating equipment or work done by the graphics department is out of line. Agencies aren't in the commercial printing business, unless they can point to some specific statutory authority that says they are.

The Commission has said that the internal mail system of an agency is a "facility". In PDC Declaratory Ruling No. 4 (5/27/1980) the Commission reaffirmed a decision it made in an enforcement matter a few months earlier. The Ruling concludes that using the internal mail system of a school district to distribute a newsletter published by a local education association, which contains endorsements of candidates for public office, would violate RCW 42.17.130. This same reasoning was followed recently when the Commission found the law was violated when a city official authorized insertion of material paid for by a political committee opposed to a pending local ballot issue in an employee newsletter.

The restriction on "clientele lists" isn't quite as complete as it might seem. Such lists are public records. Their release is governed by the public records provisions of RCW 42.17.250 et seq. If the list is generally available to the public, it can't be denied to someone who says they will, or who it is thought might, use it in a campaign. If it's made available to the swimming pool supporters, it must be made available to the opponents, if they ask. It's been argued that RCW 42.17.260(5) should control because it prohibits use of an agency's lists of individuals for commercial purposes. We've rejected that contention. Political purposes aren't commercial purposes. I don't know of any campaign that was ever a "profit expecting" enterprise. Companies that develop and sell mailing or door belling lists might be the exception. If that restriction could apply, it would only pertain to lists of individuals, not to lists of businesses or associations that might be an agency's clientele.

If we have one great lingering frustration, it's with those officials who seem to want to crowd the line rather than avoid it. I recall listening to a local official testify in a legislative hearing that a very eye-catching brochure his jurisdiction put out which seemed to be factual was intended to "neutralize the opposition" to a pending ballot proposition. We see a growing number of slick pieces being put out by public entities. They may be factual, but they look very much like sales pieces. The public perception is that they are campaign

pieces. This perception may result in public ridicule and a "NO" vote. Such pieces do as much, or more, damage to public goodwill and confidence than a finding of a violation of law by the Commission would do.

I appeal to you today for help in making your clients more aware of the principles underlying the prohibition and to do everything you possibly can to help them avoid the appearance of impropriety as well as a violation of law.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

REPLY TO: Item 6

☑ 2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176

☐ Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

ALASKA PUBLIC OFFICES COMMISSION

February 12, 1990

Feb 15 Report campaign closure

~~Dec 31~~ Campaign Dec 31

Representative David Finkelstein
Pouch V
Juneau, Alaska 99811

Dear Representative Finkelstein:

It is my understanding that HB 327 has been referred to a specially-created House State Affairs subcommittee for further discussion and for preparation of a committee substitute.

The Alaska Public Offices Commission met by teleconference the morning of February 9, 1990, to discuss this measure (Commission members Annie Laurie Howard, Jane Behlke, Rodman Wilson, and Winston Burbank participating). The commission would appreciate your consideration of the following comments on the latest version of the proposed committee substitute.

Section 1

The commission favors this provision, which exempts small municipal campaigns from APOC reporting requirements.

Section 2

The commission supports language contained in this section which provides that contributions may not be received by state candidates after December 31 of an election year (although the commission continues to prefer an end to contributions as of election day). The commission also supports the language which requires campaign account closure on January 12, and a report to the commission on ~~January 31.~~ Feb. 15

The commission anticipates that this report would be combined with the year-end report required under current law. The commission therefore suggests including in the committee substitute an amendment to AS 15.13.110(a)(4), to provide that a report shall be filed January 31 of each year for expenditures and contributions received which were not reported during the previous calendar year (as opposed to December 31 as provided in current law).

With regard to the language in the proposed committee substitute which provides that post-election contributions may be received by municipal candidates until 45 days after the election, it would be helpful if this language could be amended to provide

that municipal campaign accounts must be closed 57 days after the election, with an additional two weeks allowed for filing a report with APOC. This amendment would conform the procedure for closing municipal campaigns with the proposed procedure for closing state campaigns.

As you know, the commission believes that surplus campaign funds should be returned pro rata to contributors or donated to charity. The commission has no objection to providing that these funds may be transferred to a general fund. With regard to pro rata return, the commission suggests return of contributions only if the amount to be returned exceeds $100.

The commission continues to favor a prohibition on transferring surplus funds to a future campaign or to a legislative office account. It is the commission's view that each campaign is discrete, and that contributions from one campaign should not be used to fund a future, separate campaign.

As I have previously discussed with your staff, the portion of the committee substitute which authorizes transfer of surplus funds to future campaigns parallels a similar provision in existing commission regulations (2 AAC 50.400, copy attached). The Department of Law has advised that under current law a campaign can contribute no more than $1000 to a future or different campaign. The reasoning is that a campaign is a group controlled by a candidate, and that a group may contribute no more than $1,000 to a candidate. Since the commission currently plans to amend its regulations in accordance with this decision, the commission suggests that Section 2 clearly indicate the legislature's intent on this issue. If it is the legislature's intent that unlimited funds can be transferred to a future campaign, the statute should incorporate language which specifically reflects this intent.

Section 3

The proposed committee substitute prohibits union or corporate contributions to candidates, but allows group contributions. Since unions or corporations could still form groups (political action committees), it is unlikely that this provision would effect a major change in current financing patterns, other than to parallel the federal system. The commission continues to favor a complete ban on contributions by unions, corporations and political action committees.

The commission notes that there may be constitutional problems with efforts to limit contributions of personal funds by a candidate to his or her own campaign. Also with regard to this

section, the commission does not favor the provision in the existing committee substitute which limits group contributions to political parties to $1,000. The commission believes that political parties should not be limited in the amount of contributions they can receive.

Section 4

This section provides that public funds may not be used to support or oppose a candidate, or to urge adoption or rejection of a ballot proposition. It further provides that public facilities cannot be used to prepare paid advertisements, and that only informational as opposed to advocacy statements may be funded at public expense.

The commission is concerned that this language is not sufficiently specific to give guidance to public officials, nor would it give adequate guidance to the commission in administering the law. A majority of commission members suggest that the subcommittee consider adopting language similar to a law on this subject adopted in Washington state (copy attached).

The commission further suggests that the subcommittee consider adopting a specific penalty for violations of this section. Without additional language, the applicable penalty under AS 15.13 would be criminal prosecution for a misdemeanor. This could result in incarceration of borough assemblies and other municipal or state entities, which does not seem a rational remedy. The commission proposes including language authorizing the commission to assess a penalty, including personal liability for those persons who have authorized these expenditures, in an amount up to three times the amount expended. This would give the commission the flexibility to provide a penalty which is rationally related to the type of conduct involved. This approach is not unique to APOC; a similar penalty structure has been proposed for licensees or permittees found to have violated alcoholic beverage laws (see CSSB 157).

The commission notes that administration of such a provision, either as worded in the committee substitute or in the Washington statute, would create substantial new responsibilities for the commission. The executive director of the Washington State Disclosure Commission has indicated that a substantial part of his agency's activities are devoted to these issues, particularly at the local level. He estimates that out of approximately 50 issues dealt with by his agency in the course of a year, from 10 to 25 involve use of public funds. The Washington Public Disclosure Commission has undertaken a preventive approach, through providing

training and information to localities to help them avoid inadvertent violations of the law. Although this approach helps avoid complaints, it is also time-consuming. Since AS 15.13 authorizes complaint investigation as well as advice and assistance, adequate funding will be critical to effective administration of this new provision in Alaska law.

Section 5

This section specifies types of union and corporate activity which do not constitute contributions. The commission believes the language authorizing these activities is confusing. First, the proposed substitute provides that communications from unions and corporations to members, stockholders and families are not a contribution. Under current commission regulations, a communication is a contribution if it endorses a particular candidate or solicits money (2 AAC 50.313(1)(4)). The committee substitute should clearly indicate whether communications of this type will be considered contributions.

Language relating to establishment and solicitation of contributions to a separate segregated fund for political purposes is also confusing. Is it the intent of this section to permit unions and corporations to establish political action committees? This language also could apply to the situation encountered in the case of VECO v. APOC, in which the Alaska Supreme Court found that VECO executives and employees formed a group and contributed excessive, unreported funds to candidates. Is this language intended to exempt this type of activity from the $1000 contribution limit?

Section 6

The commission notes that the proposed committee substitute reiterates AS 15.13.090 (identification of communications). The new language would provide that the commission has the ability to adopt regulations to implement this section, authority already granted to the commission under AS 15.13.030(10). The commission believes that substantive changes to AS 15.13.090 are needed to allow candidates more flexibility in identifying their communications.

The commission suggests one of two alternatives. The first alternative is to revise the statute to provide a more flexible approach to identification of political communications. Suggested language is attached. Alternatively, the commission suggests that the statute be amended to provide that political communications must be clearly identified as to source of payment, but that the

remainder of existing law be deleted, with the commission given authority to determine by regulation what constitutes a clear communication.

Amendments to AS 15.13.090 could result in a positive change for both candidates and the commission, and the commission urges your careful consideration of these concerns.

Section 7

The commission supports the language in section 7, which would close the two day pre-election reporting gap.

Section 8

The commission supports the language in this section, which would provide a $250 maximum civil penalty for failure to properly identify political communications, while retaining the criminal sanction in the event of an egregious violation.

Fiscal Impact

Based on the commission's belief that enactment of the committee substitute would generate many new complaints and requests for advice and assistance, and would require changes to the commission's manuals, forms and regulations, the commission anticipates requesting approximately $130,000 in funding for new positions: a Range 16 paralegal investigator (cost: $44,382); a Range 16 research analyst II to provide assistance, advice and training ($44,382); a Range 10 secretary, since the commission is currently staffed with only one secretary who cannot absorb additional duties ($31,645), and with funds for necessary equipment ($8,500).

Although the commission does not agree with all of the proposed provisions in this bill, the commission commends the legislature, the State Affairs Committee, and the subcommittee for giving serious consideration to these issues. The commission will be glad to work with the full committee or the subcommittee to suggest alternative wording, or to offer any other assistance appropriate.

Thank you for the opportunity to submit comments.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

Karla L. Forsythe
Executive Director

Attachments:

1. 2 AAC 50.400
2. RCW 42.17.130
3. 2 AAC 50.313(1)(4)
4. Proposed language, section 6

cc: APOC Members
APOC Senior Staff
Sioux Plummer, Special Assistant
Dept. of Administration
Nancy Gordon, Assistant Attorney General

administer oaths or, if none of the preceding alternatives is available, may be signed by the official without benefit of the oath so long as the official states, in writing, that the affidavit is signed under penalty of perjury; or

(2) pay, within 30 days after receipt of the assessment notice described in (d)(2) of this section, the civil penalty assessed.

(f) If a candidate or group subject to a civil penalty assessment for the late filing of a campaign disclosure report refuses, or fails, within the time required, to submit an affidavit or make payment, then commission staff will refer the matter to the attorney general for appropriate action. The commission will not hear an appeal if an affidavit is not filed within the time required.

(g) An affidavit timely filed with the commission will be considered at the next regular meeting of the commission. If a candidate or group's appeal is

(1) denied by the commission, commission staff will notify the candidate or group of its decision within 15 days, and require that the civil penalty originally assessed be paid within 30 days after the date of the letter containing notification of the commission's decision; or

(2) accepted by the commission, commission staff will notify the candidate or group of its decision within 15 days, informing him or it that the civil penalty assessment has been waived and that the matter is considered closed; or

(3) accepted, in part, by the commission, commission staff will notify the candidate or group of its decision within 15 days, and require that the reduced civil penalty assessment be paid within 30 days after the date of the letter containing notification of the commission's decision.

(h) A candidate or group may appeal the commission's decision to deny or partially accept reasons for lateness to the superior court within 30 days after his receipt of the notice under Rule 45 of the Appellate Rules of the Alaska Court System. If no appeal is made within 30 days and no payment is made, the matter will be referred to the attorney general for appropriate action.

(i) If, upon review of a report required by AS 15.13.110(a), (b), or (e), the commission's staff finds substantial or continuous noncompliance with AS 15.13 or any provision of this chapter, or with requests by staff for information required to be reported under this chapter, the matter must be brought to the commission for review. The commission will, in its discretion, reduce or waive any initial civil penalty, uphold any initial civil penalty, increase the amount of any initial civil penalty to an amount not exceeding the maximum amount established in AS 15.13.125, or instruct its staff to begin preliminary investigation into the matter. Where no initial civil penalty has been assessed, the commission will, in its discretion, assess a civil penalty up to the maximum amount established in AS 15.13.125 if the candidate or group in question does not comply. (Eff. 7/22/78, Reg. 67; am 5/14/80, Reg. 74; am 5/24/81, Reg. 78; am 10/18/81, Reg. 80; am 6/29/84, Reg. 90; am 1/4/86, Reg. 97)

Authority: AS 15.13.010
AS 15.13.030(10)
AS 15.13.125

2 AAC 50.395. REPORTING BY A BUSINESS ENTITY OR LABOR ORGANIZATION. Repealed 1/4/86.

2 AAC 50.397. REPORTING BY PERSONS OUTSIDE THE STATE. Persons residing outside the State of Alaska are subject to the same reporting requirements, restrictions, and responsibilities under AS 15.13 as those placed upon persons residing within the state. (Eff. 4/28/79, Reg. 70)

Authority: AS 15.13.030(10)

2 AAC 50.400. DISBURSEMENT OF A SURPLUS BALANCE IN A CAMPAIGN ACCOUNT. (a) The disbursement of a surplus balance of a candidate or group's campaign account must be reported to the commission within 10 days after final disposition of the balance.

(b) A candidate disbursing the surplus balance in his campaign account may

(1) give the money to charity:

(2) repay his contributors:

(3) repay himself, if he made contributions to his own campaign:

(4) take, as income, any money which exceeds the amount which he personally contributed to his campaign:

(5) leave the money in a campaign account until the next time he campaigns for elective office; however, any interest realized from a surplus in a campaign account must remain in the account and be reported on the first report required of him when he is again a candidate for elective office:

(6) contribute the money to another candidate or a group controlled by a candidate, not to exceed the $1,000 limitation, or to a political party or group supporting a ballot proposition or question; or

(7) transfer the money to his office allowance fund.

(c) A group disbursing the surplus balance in its campaign account may

(1) give the money to charity; or

(2) repay its contributors; or

(3) leave the money in a campaign account until the following election, if the group plans to remain active; however, any interest realized from a surplus in a campaign account must remain in the account and be reported on the first report required of the group when it is again active in an election; or

(4) contribute the money to a candidate or a group controlled by a candidate, subject to the $1,000 limitation and other prohibitions under AS 15.13 and 2 AAC 50, or to a political party or group supporting a ballot proposition or question.

(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, Reg. 67; am 10/18/81, Reg. 80)

Authority: AS 15.13.030(10)

2 AAC 50.401. POST-ELECTION FUND-RAISING BY CANDIDATES AND CONTROLLED GROUPS. (a) A candidate or a candidate-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 [illegible] cludes

(1) a candidate's personal [illegible] before the date of the prior [illegible]

(2) campaign [illegible] reported on a [illegible] 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

WASHINGTON STATE STATUTE

USE OF PUBLIC FUNDS IN CAMPAIGNS

RCW 42.17.130 Forbids use of public office or agency facilities in campaigns. No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees or the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency: Provided, That the foregoing provisions of this section shall not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

(3) a payment made by any individual for his or her own travel expenses, if such payments are voluntary and are made without any understanding that they will be directly or indirectly repaid;

2 AAC 50.313 (1)(4)

(4) a payment made by a business, corporation, trade association, labor organization, or other organization not organized primarily to influence elections to communicate directly with its members or employees, or their families, on any subject, if the communication is of the same format and nature used by the organization when it has communicated in the past on nonpolitical subjects, does not request members or their families to do anything other than exercise the right to vote, and does not solicit individual contributions to a clearly identified candidate or group chosen by the organization;

(5) a gift, subscription, loan, advance, or deposit of money or anything of value made with respect to a recount of a state or municipal election.

(m) A contribution made by a married individual is not attributed to that individual's spouse, unless otherwise specified in writing by the spouse at the time the contribution is made. (Eff. 1/4/86, Reg. 97)

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

2 AAC 50.314. DEFINITION OF "GROUP"; REPORTING BY BUSINESSES. (a) In 2 AAC 50.310 – 2 AAC 50.405, "group" includes

(1) every combination of 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 for directing or controlling those activities to secure or defeat the election to public office of an individual or candidate or to secure or defeat a ballot proposition;

(2) a political action committee, draft group, association, club, corporation, partnership, trade association, incorporated or unincorporated association, or labor organization organized to aid or promote the nomination, election, defeat, or recall, of any candidate for political office or to aid the passage or defeat of a ballot proposition;

(3) two or more persons who jointly make a contribution in the name of another as described in 2 AAC 50.357.

(b) A corporation, partnership, sole proprietorship, trade association, fraternal or charitable organization, incorporated or unincorporated association, firm, or business trust may report its contributions and expenditures as required by AS 15.13.040(d) and (e) as an individual if

(1) all contributions and expenditures to influence the outcome of an election are made from the organization's general day-to-day operating account;

(2) the organization does not conduct a fundraising drive or assessment among its members or employees for the purpose of influencing an election;

(3) the organization does not exercise direction, control, or discretion over the choice of the recipient candidate or group, and the organization does not exercise direction, control, or discretion over the expenditure of money or other things of value collected, pooled, solicited, or otherwise paid by others for the purpose of influencing an election. (Eff. 1/4/86, Reg. 97)

Authority: AS 15.13.030(10)
AS 15.13.040
AS 15.13.130(3)

2 AAC 50.315. CONTRIBUTION LIMITATION EXEMPTION. (a) Groups that nominated a candidate for governor who received at least three percent of the total vote cast at the 1982 general election for governor are considered to be exempt from the contribution limitation set out in AS 15.13.070(a).

(b) Until the effective date of a statutory definition of "political party" that replaces AS 15.60.010(20) as it exists on the effective date of this section (and was held invalid in *Vogler v. Miller*, 660 P.2d 1192 [Alaska 1983]), a group, other than a group described in (a) of this section, desiring an exemption from the contribution limitation set out in AS 15.13.070(a) must submit to the commission an application

Proposed Addition to SB 384

Sec. 15.13.090 Repeal and rewrite to read:

Sec. 15.13.090. **Identification of advertising.**

(a) Advertisements, including handbills, billboards, yard signs and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question, shall be clearly identified with the words "paid for by" followed by the name and address of the candidate, group, or individual paying for the advertisement.

(b) Lettering in an advertisement other than a newspaper shall be at least 3/8 inches high if the advertisement exceeds 12 inches in length or width.

(c) In radio and television advertisements the words "I paid for this ad" may be used and the address omitted if the words are spoken by the candidate.

(d) The "paid for by" line may be omitted from advertising items less than 3 inches in length or width and from motor vehicle bumper or window stickers.

If the above language is deemed to contain too much detail for a statute, rewrite Sec. 15.13.090, in order to allow more flexibility about the "paid for by" line, to read:

Sec. 15.13.090. **Identification of communication.**
Advertisements, including handbills, billboards, yard signs, other communications intended to influence the election of a candidate or outcome of a ballot proposition or question, and radio and television advertisements shall be identified as to payer in accordance with regulations promulgated by the commission.