HB
305

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sponsor Statement for House Bill 305

"An Act relating to campaign fund raising by a legislator, legislative employee, or candidate for election to the legislature during a regular or special legislative session."

In 1998, the Legislature changed AS 24.60.031(b) to allow a legislator to raise campaign funds during a legislative session as long as the funds were not for a legislative campaign. This enabled sitting members to raise money for a gubernatorial, federal or municipal campaign. House Bill 305 reverses this change and prohibits any fundraising by a legislator during a legislative session.

If the goal of the Legislative Ethics Act (AS 24.60) is to set ethical guidelines for legislators, it seems inconsistent to allow fundraising during a session for some offices but not others. HB 305 will bring consistency to the Legislative Ethics Act's guidelines on fundraising and ensure that a legislative session remains a forum for policy debates rather than an opportunity to fundraise for future elected office.

Email: Representative_Kevin_Meyer@legis.state.ak.us • **Toll Free:** (866) 465-4945
Session: State Capitol, Juneau, Alaska 99801-1182 • **Phone:** (907) 465-4945 **Fax:** (907) 465-3476
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • **Phone:** (907) 269-0199 **Fax:** (907) 269-0197

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 305(STA)
(H) Publish Date: 1/23/08

Identifier (file name): HB305-DOA-APOC-1-18-08
Title: "An Act relating to campaign fund raising by a legislator..."
Sponsor: Representative Meyers
Requester: House State Affairs

Dept. Affected: Administration
RDU: AK Public Offices Commission
Component: AK Public Offices Commission
Component Number: 70

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2009**	**FY 2009**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: *(Attach a separate page if necessary)*

Section 1 of this bill amends the campaign dislcosure law to restrict any candidate for legislative office from soliciting or accepting campaign contributions during a legislative session in any location in which the legislature is convened. This section of law is not enforceable by the Public Offices Commission, under the ruling of the Alaska Supreme Court in State v. Alaska Civil Liberties Union (ACLU), No. 5108, 199 WL 21944 (Alaska April 16, 1999). See Attorney General's Opinion 661-99-0513, June 22, 1999. This bill will not increase the operating costs for APOC.

Prepared by: Brooke Miles
Division: Alaska Public Offices Commission
Approved by: Kevin Brooks, Deputy Commissioner
Department of Administration

Phone: 907-334-1726
Date/Time: 1/18/2008 9:16 a.m.
Date: 1/18/2008

(Revised 11/19/2007 OMB)

C

HOUSE COMMITTEE REPORT

2-6-08

(7)
Date Referred to Committee: January 23, 2008

FURTHER REFERRALS: Rules

Date of Committee Action: Feb. 4, 2008

The RULES Committee considered: **HB 305**

HOUSE BILL NO. 305 **CAMPAIGN FUND RAISING DURING SESSIONS**

"An Act relating to campaign fund raising by a legislator, legislative employee, or candidate for election to the legislature during a regular or special legislative session."

Recommends it be replaced with [ ] HCS *or* [✓] CS for HB 305 (RLS)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR ______ [ ] Same Title [X] New Title

[ ] attach amendments
[ ] add new referral to ____________ Committee
[ ] Letter of Intent ____________ Committee

List of Abbrev for Depts.: ADM, CED, COR, CRT, EED, DEC, DFG, GOV, HSS, LWF, LAW, LEG, MVA, DNR, DPS, REV, DOT, UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
ADM	1			✓

Signing with recommendations	Printed Last Name	DP (5)	DNP	NR	AM (2)
[signature]	FAIRCLOUGH	✓			
[signature]	GATTENBERG				X
[signature]	HARRIS	✓			
[signature]	KERTTULA	✓			
[signature]	SAMUELS	X			
[signature]	Johnson				X
Chair: [signature]	Coghill	✓			
Chair:					

:OUSE COMMITTEE REPOI

(7)

Date Referred to Committee: January 15, 2008 **FURTHER REFERRALS:**

Date of Committee Action: 1-22-08

The STATE AFFAIRS Committee considered: **HB 305**

HOUSE BILL NO. 305 **CAMPAIGN FUND RAISING DURING SESSIONS**

"An Act relating to campaign fund raising by a legislator, legislative employee, or candidate for election to the legislature during a regular or special legislative session."

Recommends it be replaced with [ ] HCS *or* [X] CS for HB 305 (STA)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR ______ **[ ] Same Title [X] New Title**

[ ] attach amendments
[ ] add new referral to ______ Committee
[ ] Letter of Intent ______ Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
Admin				X

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
[signature]	Johnson	X			
[signature]	JOHANSEN	X			
[signature]	Roses	X			
[signature]	Coghill			✓	
[signature]	Doll			✓	
Chair: [signature]	LYNN	X			
Chair:					

ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE

REPRESENTATIVE JOHN COGHILL, CHAIRMAN

State Capitol Juneau, AK 99801-1182 (907) 465-3719

3340 Badger Road Suite #290, North Pole, AK 99705 (907) 488-5725

The rewrite of HB 305 in State Affairs **created overlap language** in AS **15.13.072(d)** ***Restrictions on solicitation and acceptance of contributions*** and a new section added in the State Affairs amendment to ***AS 15.13.074 Prohibited contributions***.

The amendment eliminates the new section to ***Prohibited contributions*** and repeals and reenacts AS 15.13.072(d) to clarify the changes made to contributions during regular or special session. Originally the statutes allowed contributions during the **90 days immediately preceding an election if the contribution was made in a place other than the capital city**. This would allow for a legislator or legislative staffer to attend special session in Anchorage within 90 days of an election and collect contributions while in special session because he or she is not in the "capital city".

With the attached amendment, a legislator or legislative employee cannot solicit or receive campaign contributions in the city hosting a regular or special session.

Alaska State Legislature
House Rules Committee

Representative John Coghill, Chairman
State Capitol Juneau, AK 99801-1182 (907) 465-3719
1292 Sadler Way, Fairbanks AK 99701 (907) 456-5081

Date: February 5, 2008

To: Alpheus Bullard, Legal Counsel

From: Rynnieva Moss, Legislative Aide RW Moss

Re: LS 1226\K version

Please prepare a CS (RLS) with the two amendments made in Rules Committee yesterday. We would like the committee report read across tomorrow morning. The amendments are attached.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM January 25, 2008

SUBJECT: Legislators who are candidates for federal office (HB 305)

TO: Representative Kevin Meyer
Attn: Mike Pawloski

FROM: Alpheus Bullard
Legislative Counsel

In a memorandum to your office dated December 13, 2007, I had advised that AS 15.13 could not be amended to include the regulation of the solicitation and acceptance of contributions for federal office, but that AS 24.60.031 could be so amended.

When I drafted the bill (that became HB 305), it was my understanding that while a state law that sought to directly regulate candidates running for federal office would be preempted, that the state had a sufficient interest in shielding its legislative processes from corruption and the appearance of corruption to allow the state to regulate the conduct of its legislators and legislative employees who might be also incidentally running for federal office. My understanding was in error.

In Tepper v. Miller, 82 F.3d 989 (1996), the United States Court of Appeals for the Eleventh Circuit affirmed an injunction against the enforcement of a Georgia law[1] that prohibited Georgia General Assembly members from accepting contributions for federal election campaigns while the General Assembly was in session, holding that the statute was preempted by the Federal Election Campaign Act of 1971 (FECA) (as amended), 2 U.S.C. § 431 et seq.

FECA includes a specific preemption provision, 2 U.S.C. § 453, which reads: "*the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.*" (emphasis added) The House Committee that drafted the provision stated that the intention was "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal Office and that the Federal law will be the sole authority under which such elections will

[1] The Georgia Ethics in Government Act, O.C.G.A. § 21-5-35(a), provided "[n]o member of the General Assembly or that member's campaign committee or a public officer elected statewide or campaign committee of such public officer shall accept a contribution during a legislative session."

be regulated." See Tepper, 82 F.3d 989, 994 (1996), quoting from H.R. Rep. No. 1239, 93d Cong., 2d Sess. 10 (1974).

The Federal Election Commission (FEC), which is vested with "primary and substantial responsibility for administering and enforcing [FECA]" (Buckley v. Valeo, 424 U.S. 1, 109 (1976)), has also consistently expressed the opinion that FECA preempts state statutes limiting the time frame during which federal candidates may accept campaign contributions.[2]

The express language of FECA's preemption provision, the provision's legislative history, and the FEC's interpretation[3] make plain that a state law operating to regulate the period in which a category of citizens can accept contributions for a campaign for federal office is preempted.

TLAB::med
08-046.med

---

[2] See Op. FEC 1994-2 (advising that FECA preempts a Minnesota statute barring lobbyists from contributing to a candidate during a regular session of the state legislature); Op. FEC 1993-25 (advising that FECA preempts a Wisconsin statute restricting the time period during which lobbyists can contribute to candidates); Op. FEC 1992-43 (advising that FECA preempts a Washington statute barring state officials from accepting campaign contributions during legislative sessions).

[3] See Orloski v. FEC, 254 U.S. App. D.C. 111, 795 F.2d 156, 164 (D.C. Cir. 1986) (FEC interpretation of FECA should be given deference because FEC's statutory responsibility to issue advisory opinions "implies that Congress intended the Commission to fill in gaps left in the statute and to resolve any ambiguities in the statutory language").

LEGISLATIVE RESEARCH REPORT

JANUARY 23, 2008 REPORT NUMBER 08.114

STATE LAWS ON CAMPAIGN FUNDRAISING DURING A LEGISLATIVE SESSION

PREPARED FOR REPRESENTATIVE KEVIN MEYER

BY PATRICIA YOUNG, MANAGER

You asked for information on campaign fundraising during legislative sessions. Specifically, you wished to know how other states address campaign fundraising by sitting legislators running either for reelection to the legislature or for other offices.

As you know, states vary remarkably in their approaches to nearly everything. Fundraising during sessions is no exception. Some states prohibit fundraising generally; others direct the prohibitions at lobbyists and political committees; a number of states are silent upon the issue. Nevertheless, **many states in some fashion restrict fundraising activities during legislative sessions.**[1] The following table provides details on eight of the states that prohibit campaign fundraising during and around legislative sessions. Briefly, we found as follows:

- Laws in **Missouri**, **New Mexico**, and **Virginia** appear to ban fundraising by any legislator for any statewide elected office—which would include federal office. New Mexico and Virginia also appear to prohibit a sitting legislator from fundraising for a local office.

- The statutory language in **Georgia** and **Nevada** would have banned any member of the legislature from fundraising for any purpose; however, the Georgia law, as it applies to candidates for federal office, was held to be preempted by federal election law. An opinion from the Nevada Attorney General arrived at a similar conclusion in regard to the Nevada law.

- The ban in **Iowa** does not apply to sitting legislators seeking election to a federal office.

- The ban in **Tennessee** does not apply to sitting legislators seeking election to a local office.

---

[1] Peggy Kerns, director, Center for Ethics in Government, National Conference of State Legislatures. Ms. Kerns can be reached at 303 856 1447.

- **Connecticut** law restricts the fundraising activity of lobbyists and their political committees on behalf of candidates, and bars candidates and political committees from accepting such contributions. The law does not apply to campaigns by legislators running for local or federal offices.

We hope this information is helpful. Please contact us if you have questions or need additional information.

Sample of State Prohibitions on Campaign Fundraising du[ring] Legislative Sessions

State	Citation	Provision	Notes
Connecticut	CGS § 9-610(e)	[During session], (1) no lobbyist or political committee established by or on behalf of a lobbyist shall make or offer to make a contribution to or on behalf of, and no lobbyist shall solicit a contribution on behalf of, (A) a candidate or exploratory committee established by a candidate for nomination or election to the General Assembly or a state office or (B) a political committee (i) established for an assembly or senatorial district, (ii) established by a member of the General Assembly or a state officer or such member or officer's agent, or in consultation with, or at the request or suggestion of, any such member, officer or agent, or (iii) controlled by such member, officer or agent, to aid or promote the nomination or election of any candidate or candidates to the General Assembly or a state office, and (2) no such candidate or political committee shall accept such a contribution	For purposes of this subsection the term "state office" means the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State, and the term "state officer" means the Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State The prohibition does not apply to lobbyists making campaign contributions during sessions to state legislators who are running for local or federal office
Georgia	OCGA § 21-5-35	No member of the General Assembly or that member's campaign committee or public officer elected state wide or campaign committee of such public officer shall seek or accept a contribution or a pledge of a contribution to the member, the member's campaign committee, or public officer elected state wide, or campaign committee of such public officer during a legislative session	This provision, as it applies to candidates for federal office, is preempted by the Federal Election Campaign Act *Teper v Miller*, 82 F 3d 989 (11th Cir 1996)
Iowa	IC § 68A 504	A lobbyist or political committee, other than a state statutory political committee, county statutory political committee, or a national political party, shall not contribute to, act as an agent or intermediary for contributions to, or arrange for the making of monetary or in-kind contributions to the campaign of an elected state official, member of the general assembly, or candidate for state office on any day during the regular legislative session and, in the case of the governor or a gubernatorial candidate, during the thirty days following the adjournment of a regular legislative session allowed for the signing of bills an elected state official, member of the general assembly, or candidate for state office shall not accept a contribution as prohibited in this subsection [However, the prohibition does not apply] to receipt of contributions by an elected state official, member of the general assembly, or candidate for state office who has taken affirmative action to seek nomination or election to a federal elective office so long as the contribution is placed in a federal campaign account	The ban does not apply to elected state officials, members of the general assembly, or candidates for state office seeking nomination or election to a federal office as long as certain conditions are met
Missouri	RSM § 130 032	Any candidate for the office of state representative, the office of state senator, or a statewide elected office shall not accept any contributions [during a legislative session] Only candidates for special election to the house of representatives, senate, or statewide elected office may, during such time, accept contributions from the date of the candidate's nomination by his or her respective political party until thirty days after the date of the election	This ban appears to extend to sitting legislators running for federal office (a "statewide elected office") but not for local office
Nevada	NRSA § 294A 300	It is unlawful for a member of the Legislature, the Lieutenant Governor, the Lieutenant Governor-Elect, the Governor or the Governor-Elect to solicit or accept any monetary contribution, or solicit or accept a commitment to make such a contribution for any political purpose [from 30 days before to 30 days after a regular session and from 15 days before to 15 days after a special session]	Federal election law preempts state election law therefore, state officials delineated in subsection (1) are not prohibited from soliciting or accepting monetary contributions for a campaign for federal office before during, or after a regular or special session of the legislature AGO 01-04 (3-12-2001)
New Mexico	NMSA § 1-19-34 1	It is unlawful [during a regular or special session] for a state legislator or candidate for state legislator, and for the governor, or any agent on behalf of any such individuals, to knowingly solicit a contribution for a political purpose	This provision appears to extend to sitting legislators running for any local or federal office
Tennessee	TCA § 2-10-310	[During regular or special sessions] no member of the general assembly or a member's campaign committee or the governor or the governor's campaign committee shall conduct a fundraiser or solicit or accept contributions for the benefit of the caucus, any caucus member or member or candidate of the general assembly or governor [Except that] a member of the general assembly who is a candidate for a local public office shall be permitted to conduct fundraising events and solicit or accept contributions for such campaign for local public office under certain conditions [However] it shall be unlawful for any lobbyist or employer of a lobbyist to make any contribution to such member's campaign committee during such period for any purpose	A state legislator can legally raise money for a federal race while the state legislature is in session, the prohibition on legislative fundraising does not apply to campaigns for federal office OAG 00-185 (12/13/00) Nonlegislators [are] not barred from fund raising, OAG 97-158 (12/01/97)
Virginia	Va Code Ann § 24 2-954	No member of the General Assembly or statewide official and no campaign committee of a member of the General Assembly or statewide official shall solicit or accept a contribution for the campaign committee of any member of the General Assembly or statewide official, or for any political committee, from any person or political committee [during a regular session] No person or political committee shall make or promise to make a contribution to a member of the General Assembly or statewide official or his campaign committee [during a regular session]	This provision appears to extend to sitting legislators running for any local or federal office

NOTES: For the purposes of this table, we have truncated descriptions of the time period around a legislative session, which vary considerably

SOURCES: The LEXIS on-line database of state statutes

Alaska State Legislature

Select Committee on Legislative Ethics

716 W. 4th, Suite 230
Anchorage, AK
(907) 258-8172
FAX: 258-2106

Mailing Address:
P.O. Box 101468
Anchorage, AK
99510

January 24, 1994

ADVISORY OPINION 94-04

Subject: Campaigning During Session

RE: May a legislator who is a candidate for a statewide elective office engage in fund raising activities for that office during the legislative session?

You are a legislator, covered by the Legislative Code of Ethics. You have filed a general letter of intent and you have announced that you are running for Lieutenant Governor in the next election. You ask whether you may engage in fund raising activities concerning that campaign during the legislative session.

Discussion

To begin with, the committee notes that campaign contributions that you report as required by law are excluded from the provisions concerning gifts by AS 24.60.080(e). [1]

Under AS 24.60.031, a legislator's fund raising activities are restricted during the legislative session. The section states:

> Sec. 24.60.031. RESTRICTIONS ON FUND RAISING. (a) A legislator or legislative employee may not
>
> (1) while the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a state legislative campaign;

---

[1] AS 24.60.080(e) states:

> (e) A political contribution that is reported under AS 15.13.040 is not a gift under this section.

(2) accept money from an event held during a legislative session if a substantial purpose of the event is either to raise money on behalf of the member or legislative employee for campaign purposes or to raise money for state legislative political purposes; or

(3) expend money in a state legislative campaign that was raised by or on behalf of a legislator during a legislative session under a general letter of intent to become a candidate for public office.

(b) In this section, "contribution" has the meaning given in AS 15.13.130.

Under paragraph (1) of subsection (a), legislators are prohibited from soliciting or accepting contributions during the legislative session for state legislative campaigns. Under paragraph (3), legislators may not spend money in a state legislative campaign that was raised during the session. The scope of paragraph (2) is not clearly limited to "state legislative campaigns." That paragraph prohibits legislators from accepting money raised at events held during the session if the event was to raise money on behalf of the legislator for campaign purposes or for state legislative political purposes. Unlike the other two paragraphs, this paragraph does not, on its face, limit the prohibition related to "campaign purposes" to "state legislative campaigns."

The committee believes that the language of the statute should be interpreted as it is written. Accordingly, a legislator running for statewide office may solicit and accept contributions for that office during the legislative session (as permitted by paragraph (1) of 24.60.031(a)) and a legislator who has filed a general letter of intent to become a candidate for public office may spend money raised during the session on a campaign for statewide office (as permitted by paragraph (3)). However, under paragraph (2), a legislator may not accept money from an event held during the legislative session if the purpose of the event was to raise money for the legislator's campaign for any elective office. The committee recognizes that this result appears inconsistent, but the committee believes that any change from this result should be made by amendment to the statute, not by interpretation of it.

Conclusion

For the reasons discussed above, the committee finds that the prohibition contained in AS 24.60.031(a)(2), concerning accepting money from an event held during the legislative session, applies to statewide campaigns, including your campaign for lieutenant governor. Therefore, you may not accept money raised during the session at fundraising events.

Adopted by the Select Committee on Legislative Ethics on January 24, 1994. Members present and concurring in this opinion were:

Joseph P. Donahue, Chair
Ed Granger, Vice-Chair
Senator Drue Pearce

Margie MacNeille
Representative Brian Porter
Shirley A. McCoy
Senator Jay Kerttula

Members absent were:

Edith Vorderstrasse
Representative Jerry Mackie

TC:gc
94-038.glc

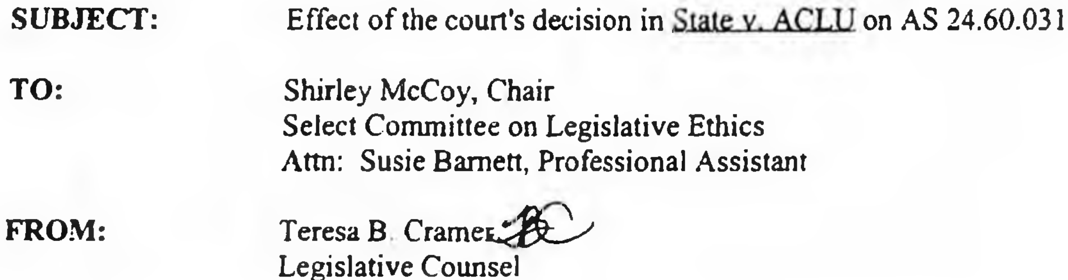
LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM April 23, 1999



SUBJECT: Effect of the court's decision in State v. ACLU on AS 24.60.031

TO: Shirley McCoy, Chair
Select Committee on Legislative Ethics
Attn: Susie Barnett, Professional Assistant

FROM: Teresa B. Cramer
Legislative Counsel

You have asked for an opinion from this office regarding the interplay of the state supreme court's recent decision in State v. ACLU, -- P.2d -- (Alaska) (Alaska Supreme Court Opinion No. April 16, 1999) and the ethics law regarding the prohibition on fund raising during session (AS 24.60.031(a)).

Short answer: The answer to your question is not clear. Having said that, it seems to me somewhat more likely than not that the ban on accepting contributions during session contained in the ethics code would survive a challenge under the reasoning in the ACLU case.

1. AS 24.60.031.

In 1992, the legislature substantially revised the legislative ethics code. The ban on accepting contributions during the legislative session was part of that legislation. As enacted, AS 24.60.031(a) read:

> **Sec. 24.60.031** RESTRICTIONS ON FUND RAISING. (a) A legislator or legislative employee may not
>
> (1) while the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a state legislative campaign;
>
> (2) accept money from an event held during a legislative session if a substantial purpose of the event is either to raise money on behalf of the member or legislative employee for campaign purposes or to raise money for state legislative political purposes; or
>
> (3) expend money in a state legislative campaign that was raised by or on behalf of a legislator during a legislative session under a general letter of intent to become a candidate for public office.

> (b) In this section, "contribution" has the meaning given in AS 15.13.130.

AS 24.60.031 was amended in 1996 by the campaign reform legislation that formed the basis for the ACLU case, but only to conform the citation to the definition of "contribution" in subsection (b) to the new statute number in AS 15.13. (Sec. 27, chapter 48, SLA 1996.)

In the last legislative session, AS 24.60.031(a) was amended to allow fund raising during the 90 days before elections, except in Juneau. The statute now reads:

> **Sec. 24.60.031. Restrictions on fund raising.** (a) A legislator or legislative employee may not
>
> (1) on a day when either house of the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a campaign for the state legislature; however, a legislator or legislative employee may, except in the capital city, solicit or accept a contribution, promise, or pledge for a campaign for the state legislature that occurs during the 90 days immediately preceding an election;
>
> (2) accept money from an event held on a day when either house of the legislature is in regular or special session if a substantial purpose of the event is to raise money on behalf of the member or legislative employee for state legislative political purposes; however, this paragraph does not prohibit a legislator or legislative employee from accepting money from an event held in a place other than the capital city during the 90 days immediately preceding an election; or
>
> (3) in a campaign for the state legislature, expend money that was raised on a day when either house of the legislature was in a legislative session by or on behalf of a legislator under a declaration of candidacy or a general letter of intent to become a candidate for public office; however, this paragraph does not apply to money raised in a place other than the capital city during the 90 days immediately preceding an election.
>
> (b) In this section, "contribution" has the meaning given in AS 15.13.400.

The legislative ethics code applies to legislators and legislative employees. (AS 24.60.020) It does not apply to candidates for the legislature unless they are incumbent legislators running for reelection or for election to a different legislative office. (AS 24.60.020(a)(2)) Therefore, when the ban on accepting campaign contributions during session in AS 24.60.031 was first enacted in 1992, the prohibition did not apply to challengers who were not themselves legislators. This circumstance is important given the supreme court's reasoning in ACLU.

2. The ACLU decision on fund raising during sessions.

The 1996 amendment to election campaign laws enacted AS 15.13.074(c), which limits the time when persons and groups may make contributions to candidates. (Section 11, Ch. 48, SLA 1996.) Under AS 15.13.074(c)(2) as it read when the ACLU suit was filed, contributions to legislative candidates, both incumbents and challengers, may not be made during a regular legislative session. (In footnote 194 of the ACLU opinion, the court notes that AS 15.13.074(c)(2) and AS 15.13.072(d) were both amended in 1998 to permit candidates for the legislature to solicit and accept contributions during the 90 days immediately preceding the election in which they are competing, except in Juneau. The court does not discuss this loosening of the restrictions on campaign fund raising.)

The court acknowledges that the state may impose restraints on the exercise of First Amendment free speech rights in order to prevent corruption or the appearance of corruption. Id. at 82. The court also notes that the receipt of contributions by incumbents is relevant to the appearance of impropriety. Id. at 82. The court distinguishes this factual situation from the receipt of contributions by challengers, and finds that there is not a comparable justification for prohibiting challengers from accepting contributions during legislative sessions. Because of this finding, the prohibition against accepting contributions during sessions is not narrowly tailored to the State's compelling interest: it is invalid as to non-incumbents. Id. at 83. The court finds that invalidating the ban only as to challengers (and leaving the ban in place as to incumbent legislators) "would fundamentally unbalance a restriction which the legislature clearly intended to apply to incumbents and challengers alike, and would defeat the legislature's clear intention as to this prohibition." Id. at 83. The court therefore invalidates the ban on accepting contributions during sessions both as to challengers and as to legislators. Id. at 83.

3. Application of the ACLU holding to AS 24.60.031.

The reasons for the court's holding in the ACLU case do not apply to the Ethics Code prohibition against accepting contributions for legislative races during the session. As discussed in the first part of this opinion, AS 24.60.031, the Ethics Code prohibition against legislators' accepting contributions during sessions, was enacted without a comparable prohibition imposed on non-incumbent challengers. Therefore, there is no basis for saying that the legislature's intent with respect to AS 24.60.031 requires that the ban be applied equally to challengers and incumbents. The court in ACLU acknowledged that preventing corruption or the appearance of corruption is a compelling state interest and that prohibiting incumbent candidates from accepting contributions during a session is relevant to that interest. Therefore, the court is not likely to find that the ban against legislators accepting contributions during session fails as an infringement of legislators' First Amendment Rights. It appears to me that the court, under the reasoning expressed in ACLU, would uphold the provisions of AS 24.60.031at least as the ban applies to legislators.

There is another basis on which the legislature's placing of a prohibition on its members might be upheld. Under art. 2, sec. 12, each house of the legislature is the judge of the

qualifications of its members. AS 24.60.031 can be viewed as an exercise of that power and, if so, a court might decline to intervene in a matter that was within the unique jurisdiction of the legislative branch of government

The ethics code prohibition against campaign fund raising during sessions applies to both legislators and legislative employees. The court in the ACLU case was not asked to examine the role of employees in the legislative process. The evidence cited by the court in support of the need for campaign fund-raising restrictions with respect to legislators describes the public response, expectations of lobbyists, and perceptions of elected officials with respect to legislators only. Id. at 6 - 7, 40 - 41, 53 - 56, and 74 - 76. The ACLU decision cannot, therefore, be directly applied to legislative employees.

The courts generally have permitted restraints on the right of public employees to participate actively in political campaigns because of the government's interest in enforcing the law and executing programs without bias or favoritism for or against political parties, in avoiding the appearance of political favoritism, and in using or appearing to use a government workforce as a political machine. United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548, at 565, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973). The case arose in the context of Executive Branch employees, but at least the last argument applies equally to Legislative Branch employees. In any case, it indicates that the court has recognized the importance of separating the political campaigning process from governmental functions. The interest of the government in prohibiting fund raising by employees as well as by legislators during session furthers this goal. It seems to me likely that the court would uphold the prohibition as it applies to employees.

TC:pl
99-054.plm

Memorandum

State of Alaska

Department of Law

TO: Karen Boorman
Executive Director
Alaska Public Offices Comm'n

DATE: June 22, 1999

FILE NO: 661-99-0513

TEL. NO: 269-5135

FROM: Jan Hart DeYoung
Assistant Attorney General

SUBJECT: Questio... following *State v. Alaska Civil Liberties Union*

You have asked a number of questions about the decision of the Alaska Supreme Court i- *State v. Alaska Civil Liberties Union (ACLU)*, No. 5108, 1999 WL 219443 (Alaska April 16, 1999). In that decision the Court upheld most of the campaign finance law reforms adopted in 1996. However, the Court did invalidate as unconstitutional two provisions: the bans on nonelection year contributions in AS 15.13.074(c)(1) and on contributions to legislative candidates during the legislative session in AS 15.13.074(c)(2). You have several questions about how the Court's decision affects other sections of the law that the Court did not address.

Summary: our opinion is that the deadline for making contributions in AS 15.13.074(c) is 45 days after the date of the election; candidates for the legislature may raise funds during the legislative session unless barred by the legislative ethics law in AS 24.60.~~130~~ 031, and candidates for statewide office may not solicit or accept contributions in Juneau during the legislative session under AS 15.13.072(g). Your questions and our analysis follow.

1. **What effect does invalidating the ban on nonelection year contributions in AS 15.13.074(c)(1) have on AS 15.13.074(c)(4) and (5), which address post election contributions and contributions to statewide candidates in Juneau during the legislative session?**

   The answer depends on whether the provision is compatible with the delayed repeal and reenactment of AS 15.13.074(c).

When the legislature adopted the 1996 campaign finance reforms, it set time limits on fund raising. AS 15.13.074(c), as it was enacted in 1996, prohibited persons or groups from making contributions except during an allowed period, generally, from January 1 of the year of the election to 45 days following the election. The legislature also adopted a contingent provision that would take effect only if the Court found "the dates before which campaign contributions may not be accepted" unconstitutional. Sec. 12, ch. 48, SLA 1996 (contingent provision); sec. 33(b), ch. 48, SLA 1996 (setting out contingency that causes contingent provision in section 12 to become effective). This contingent provision ("section 12") would allow campaign contributions to be made earlier -- 18 months before the election

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 7
To JOANNO	From BROOKE
Co.	Co. APOC
Dept.	Phone #
Fax # 269-0152	Fax #

In *State v. ACLU*, the Court did find "the dates before which campaign contributions may not be accepted" unconstitutional. The Court held that prohibiting contributions in nonelection years significantly interfered with the constitutional right of association because the time period for contributions was relatively short without appearing to address the State's interests of preventing corruption or its appearance. 1999 WL 219443, at *28, slip op. at 78-79. The Court expressly invalidated AS 15.13.074(c)(1), (2), and (3) and noted that its action caused the contingency in section 12 to take effect. 1999 WL 219443, at *28 & n. 192, slip op. at 79 & n. 192.

However, in 1998 (after the ACLU filed its lawsuit but before the Court's decision), the legislature amended AS 15.13.074. Sec. 5, ch. 74, SLA 1998. First, it amended AS 15.13.074(c)(4) to expand the period for contributions from 45 days to 60 days following the election or to December 31, whichever came first. Second, it added AS 15.13.074(c)(5) to prohibit contributions to statewide candidates in Juneau during the legislative session. Sec. 5, ch. 74, SLA 1998. When adopting the amendments, the legislature apparently overlooked the contingent provision; the legislature did not amend section 12 of the 1996 reforms to conform to the changes it made to AS 15.13.074.

Section 12 purports to repeal all of AS 15.13.074(c).[1] Because section 12 was not amended to increase the time for postelection contributions or to ban contributing in Juneau

---

[1] The complete text of section 12 follows:

"Sec. 12. AS 15.13.074(c) is repealed and reenacted to read:

(c) A person or group may not make a contribution

(1) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 wh n the office is to be filled at a general election before the date that is 18 months before the general election;

(2) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 for an office that is to be filled at a special election or municipal election before the date that is 18 months before the date of the regular municipal election or that is before the date of the proclamation of the special election at which the candidate or individual seeks election to public office; or

(3) to any candidate later than the 45th day

(A) after the date of a primary election if the candidate

(i) has been nominated at the primary election or in running as a write-in candidate; and

(ii) is not opposed at the general election;

during the legislative session, applying section 12 literally would repeal the 1998 amendments and reinstate parts of the earlier version of AS 15.13.074(c). The result would be to return the postelection deadline to 45 days and to extinguish the restrictions on contributing in Juneau.

However, a rule of statutory construction allows intervening amendments to survive repeal when a delayed enactment takes effect. The rule appears in the principal treatise on statutory construction, Norman J. Singer, *Sutherland Statutory Construction* § 23.29 (5th ed. 1993):

> The reenactment of a statute is a continuation of the law as it existed prior to the reenactment as far as the original provisions are repeated without change in the reenactment. Consequently, an intermediate statute which has been superimposed upon the original enactment as a modification of its provisions is likewise not repealed by the reenactment of the original statute, but is construed to be in force to modify the reenacted statute as it modified the original enactment. However, this immunity from repeal is extended only to those provisions of intermediate acts which are consistent with the reenactment; any provisions in the intermediate act which are inconsistent with the reenactment are repealed.

This rule is applied in Alaska. It was applied in Alaska before statehood, *U.S. Smelting Refining & Mining Co., v. Lowe*, 11 Alaska 429, 74 F. Supp. 917, 921, 922 (D. Alaska Terr. 1947),[2] and the Legislative Affairs Agency has incorporated the rule into the state's legislative drafting manual:

> If a statutory amendment is to be delayed, the following question may arise: Do intervening amendments to the same AS section survive once the delayed amendment takes effect. The general rule is that intervening amendments will survive unless incompatible with the delayed

(B) after the date of a primary election if the candidate was not nominated at the primary election; or

(C) after the date of the general election, or after the date of a municipal or municipal runoff election.

2 *U.S. Smelting Refining & Mining Co., v. Lowe*, 11 Alaska 429, 74 F. Supp. 917, 921, 922 (D. Alaska Terr. 1947), *aff'd Lowe v. United States Smelting Refining & Mining*, 175 F.2d 486, 489 (9th Cir.1949) ("Enough to say that repeals by implication are regarded with disfavor; but where the latest legislative word on a subject is so incompatible with a previous enactment that the two can not exist together the courts have not hesitated to hold the earlier enactment repealed insofar as it is in conflict with the later"), *and vacated on other grounds*, 338 U.S. 954, 70 S.Ct. 493 (1950).

> amendment. See *U.S. Smelting, Refining & Mining Co. v. Lowe*, 12 Alaska 423 (9th Cir. 1949) and the discussion in the same case at 11 Alaska 429 (D. Alaska 1947). If intervening amendments are to be allowed, it is best to draft the delayed amendment as an amendment rather than a repeal and reenactment. If intervening amendments are to be wiped out once the delayed amendment takes effect, it is best to draft the delayed amendment as a repeal and reenactment and include an intent section stating that intervening amendments are not to be carried forward once the repeal and reenactment takes effect. [Legislative Affairs Agency, Manual of Legislative Drafting 21 (1999).]

The preferred practice is for the legislature to state when it enacts legislation with a delayed effective date whether it intends intervening amendments to survive the reenactment. According to the manual, delayed legislation that does not extinguish intervening amendments should be in the form of an amendment. On the other hand, delayed legislation that repeals intervening amendments should be in the form of a repeal and reenactment with a statement of intent that intervening amendments are not carried forward. In adopting section 12 in 1996, the legislature did not follow this practice. It used the form of the delayed repeal and reenactment but did not state any intention about the survival of intervening amendments. Because the legislature did not declare its intention, we apply the rule of construction, which carries intervening amendments forward unless they are incompatible with the delayed enactment, and because the intervening amendments are incompatible, conclude that the amendments do not carry forward.

a. Because postelection fund raising deadlines of 60 days and 45 days following the election are in direct conflict, the longer deadline in the intervening amendment is* not *carried forward and does not survive reenactment.

The 1996 campaign finance law reforms established a deadline for post election fund raising of 45 days following an election. AS 15.13.074(c)(4), sec. 11, ch. 48, SLA 1996. This 45-day deadline also appears in the contingent provision, section 12. AS 15.13.074(c)(3), sec. 12, ch. 48, SLA 1996. In 1998 the leg. ature amended AS 15.13.074(c)(4), expanding the deadline to 60 days following the election or December 31, whichever came first. Sec. 5, ch. 74, SLA 1998. The deadlines in the intervening amendment and the reenacted AS 15.13.074(c) are in direct conflict and cannot be reconciled. Because the intervening amendment is inconsistent with the reenactment of AS 15.13.074(c), under the rule of construction, the 1998 amendment to AS 15.13.074(c)(4) may not carry forward and is repealed. Thus, the postelection deadline for contributing returns to 45 days following the election.[3]

---

[3] During the 1999 legislative session following the issuance of *ACLU v. State*, the legislature considered a bill that would have expanded the post election deadline for making contributions to the earlier of 60 days following the election or December 31 of the year of the

b. Because prohibiting contributions to candidates for statewide office in Juneau during the legislative session is incompatible with section 12, it does not survive reenactment.

In 1998 the legislature added a new provision, AS 15.13.074(c)(5), which prohibits contributions in Juneau to statewide candidates during a legislative session, thereby expanding the circumstances in AS 15.13.074(c) in which "a person or group may not make a contribution." Sec. 5, ch. 74, SLA 1998. Whether banning some contributing in Juneau is compatible with the delayed enactment of section 12 provides a more difficult question than the expanded postelection deadline in AS 15.13.074(c)(4), discussed in the previous section.

Other legislative session contribution limits preceded the Juneau ban in AS 15.13.074(c)(5). AS 15.13.074(c)(2) banned contributions during the session to all candidates for legislative office.[4] In addition, during the legislative session, legislators and legislative staff may not raise campaign funds regardless of the political office they are seeking under AS 24.60.031. This prohibition in the legislative ethics law handicaps those legislators seeking elective office against an opponent not subject to the prohibition. By adopting the Juneau ban in AS 15.13.074(c)(5), the legislature narrowed the opportunities for candidates not otherwise restricted by the legislative ethics law to raise campaign funds during the legislative session. It thereby helped level the playing field for legislators and legislative staff running for statewide office.

Applying the rule of construction, we must examine the compatibility of the Juneau ban in AS 15.13.074(c)(5) with section 12. Section 12 was intended to expand the time period for *pre*election contributions if the Alaska Supreme Court found the time period in AS 15.13.074(c)(1) too restrictive. The legislature stated, "if a court order is entered and becomes final declaring that the dates set out in AS 15.13.074(c), as enacted by sec. 11 of this Act, as the dates before which campaign contributions may not be accepted, are unconstitutional," then section 12 takes effect. Sec. 33(b), ch. 48, SLA 1996. The legislature obviously intended section 12 to fill the void created if a court invalidated the short preelection contributions period and to cure any constitutional deficiency by expanding the time for contributing. On the other hand, the Juneau ban narrows, rather than expands, opportunities for fund raising. Retaining the Juneau ban in AS 15.13.074(c)(5) also seems inconsistent with the repeal of AS 15.13.074(c)(2). The legislative session ban in AS 15.13.074(c)(2) banned contributions to all candidates for the

---

election. House Bill 225, §1, 21st Legislature, First Session (1999). The bill was not enacted during the first session. 1999 House Journal 1635, 1672 (5/18-19/99) (unfinished business).

[4] In addition, all candidates for *legislative office* at the time the Juneau ban in AS 15.13.074(c)(5) was adopted were prohibited from soliciting or accepting contributions during the legislative session under AS 15.13.072(d).

legislature during the legislative session. The Court found the legislative session ban unconstitutional in *State v. ACLU*, 1999 WL 219443, at *28-29, slip op. at 81-83, due to its impact on the right of association through making contributions to nonincumbent candidates. The legislative session ban was then repealed through the repeal and reenactment of AS 15.13.074(c) in section 12 when the Court found the date contributions could begin unconstitutional. Sec. 33(b), ch. 48, SLA 1996. Because the legislature intended the repeal of the legislative session ban in AS 15.13.074(c)(2) when AS 15.13.074(c) was repealed and reenacted, it probably would not intend to carry forward even a partial legislative session ban. Thus, we conclude that carrying forward the Juneau legislative session ban is inconsistent with section 12. Moreover, we have reservations about the constitutionality of AS 15.13.074(c)(5) after *State v. ACLU*.[5] Because carrying forward AS 15.13.074(c)(5) is inconsistent and incompatible with the goals of expanding opportunities for fund raising and responding to a Court's decision that the time period was unconstitutionally restrictive, it does not meet the test of the rule of construction. We therefore conclude that the ban on contributions to candidates for statewide office in the capital city during the legislative session should not carry forward.

2. What effect does invalidating the ban on contributing during the legislative session in AS 15.13.074(c)(2) have on AS 15.13.072(d), which prohibits candidates from soliciting or accepting contributions while the legislature is in session?

The effect is to invalidate AS 15.13.072(d). Making a contribution is not a meaningful expression of association if the candidate may not accept the contribution.

Alaska's campaign finance laws set contribution limits in two ways: they impose limits on the makers of contributions in AS 15.13.074 and they limit the candidates' ability to solicit and accept contributions in AS 15.13.072. In *State v. ACLU*, the Court found certain

---

[5] The constitutionality of the Juneau ban in AS 15.13.074(c)(5) after *State v. ACLU* provides a close question. The Court did not address AS 15.13.074(c)(5) in the decision. But a rule prohibiting contributing in Juneau during the legislative session (AS 15.13.074(c)(5)), resembles a rule prohibiting contributions to legislative candidates during the session (AS 15.13.074(c)(2)), which the Court found unconstitutional. Like the legislative session ban in AS 15.13.074(c)(2), the Juneau ban in AS 15.13.074(c)(5) limits the opportunities for expressing support for candidates and thereby encroaches on the right of association of contributors. The key is whether the Juneau ban succeeds in combating corruption and its appearance where the legislative session ban in AS 15.13.074(c)(2) did not. Because the prohibition in AS 15.13.074(c)(5) is much narrower – it only applies to candidates for statewide office and in the capital city – it can be distinguished from the legislative session ban found unconstitutional. Thus, while *State v. ACLU* raises a question about the constitutionality of AS 15.13.074(c)(5), it does not compel the answer. See Court's discussion of the legislative session ban, 1999 WL 219443, at *28-29, slip op. at 81-83.

limits unconstitutional but in doing so addressed only the limits in AS 15.13.074 on persons or groups making the contribution. It did not address the closely related limits on the candidates in AS 15.13.072. This omission is not surprising because the Court's focus was the ...stitutional rights of the contributors. Nevertheless, the omission is confusing and raises the question whether requiring a candidate to refuse a contribution infringes on the contributors' constitutional right to associate with the candidate by making a contribution. The Court found that prohibiting contributions to candidates during the legislative session interfered with a contributor's right of association with nonincumbent candidates without promoting the government's interest in preventing corruption or its appearance. The contribution and act of association, however, would be p... less if the candidate could not accept the contribution. Based on the Court's decision in *St... v. ACLU,* we believe the Court would conclude that prohibiting the solicitation and acceptance of contributions interferes with the constitutional right of association without promoting a governmental interest. Although the Court did not expressly invalidate the prohibition in AS 15.13.072(d), we believe it would find the prohibition on legislative candidates' soliciting or accepting contributions during the legislative session to be unconstitutional and unenforceable.

Please note that this opinion and the Court's decision in *State v. ACLU* should not affect the validity of the ban on fund raising during the legislative session in the legislative ethics law, AS 24.60.130. That section applies only to legislators and legislative staff. It was not at issue in *State v. ACLU* and remains effective. See opinion of the legislative counsel, Mem. from T. Cramer, Legislative Counsel, to Select Comm. Legislative Ethics (4/23/99).

3. **Does *State v. ACLU* invalidate AS 15.13.072(g), which prohibits candidates for statewide office from soliciting or accepting contributions in the capital city w... the legislature is in session?**
No. AS 15.13.072(g) remains valid.

Earlier in this memorandum we determined that *State* v. *ACLU* and the consequent repeal of AS 15.13.074(c) by section 12 repealed the prohibition in AS 15.13.074(c)(5) against contributions to candidates for statewide office in Juneau during the legislative session. Your question is whether the parallel prohibition in AS 15.13.072(g) against candidates soliciting or accepting such contributions is now also invalid.

Our earlier determination that AS 15.13.074(c)(5) had been repealed followed the application of the rule of construction for delayed enactments. The 1996 legislation, however, did not contain a section comparable to section 12 that would repeal parts of AS 15.13.072, which limits candidates' solicitation or acceptance of contributions. The rule of construction for intervening amendments therefore does not apply. Moreover, we cannot say that prohibiting contributions in Juneau during the legislative session is unconstitutional. Although we have reservations about the constitutionality of legislative session limits on contributions to *nonlegislative* candidates following *State v. ACLU,* we believe the limits in AS 15.13.072(g) are distinguishable from the limits that the Court found unconstitutional. See discussion in note 5.

While we have doubts about the constitutionality of AS 15.13.072(g), we cannot conclude that it is unconstitutional. Despite these doubts, because the rule of construction does not apply to make AS 15.13.072(g) ineffective, the limits in AS 15.13.072(g) on soliciting or accepting such contributions in the capital city remain valid.

I hope this discussion is helpful. If the foregoing discussion failed to answer your questions, please do not hesitate to contact me for clarification.

JHD:jv

State v. Alaska Civil Liberties Union, 978 P.2d 597, 631 (Alaska 1999):

The court case d[illegible] overrule the prohibition against making contributions during the legislative se[illegible]ion. Here is the text from the opinion if you are interested:

b. Ban on contributi[illegible]s during the legislative session; AS 15.13.074(c)

[24] Alaska Statute 15.13.074(c)(2) prohibits [illegible]aking contributions to legislative candidates, including both challengers and incumbents, during a regular legislative session. (FN194)

AkCLU argues that this ban severely constrains effective campaig advocacy by legislative candidates. "Given the length of the Alaska legislative session, fundraising [under the ban] is limited to a two-month period before a primary election and [to] two and one-half [additional] months before a general election." (FN195) Moreover, AkCLU claims the associational rights of potential contributors are severely restricted during the legislative session.

The State argues that this ban "addresses the perception that contributions are made to influence the conduct of elected officials during the session." It also contends that "the prohibition frees sitting legislators from the fund-raising treadmill and allows them to focus on the public's business during the legislative session." The State claims that this interest is compelling enough to support the ban. The Josephson Report survey, in which abo[illegible] sixty percent of legislators stated they believed fundraising during the legisla[illegible]ve session needed to be regulated, supports this contentio[illegible] to a limited extent.

Considered in isolation, the "legislator-freeing" rationale is not sufficiently compelling to justify this [illegible]striction. In Rosenstiel v. Rodriguez, the Eighth Circuit held that freeing legislators to deal with issues was only relevant as a by-product of corruption-fighting measures. (FN196) In other cases cited by the State, the interest was found sufficient

——— 978 P.2d 631 ———

only to promote a speech-enhancing measure. (FN197)

Preventing corruption or its appearance is a compelling interest justifying narrowly-tailored restraints on First Amendment rights. **But the very circumstance most relevant to the appearance of corruption--receipt of contributions by incumbent candidates during the session--does not imply that in-session contributions to challengers also give the appearance of corruption. The ban is therefore not narrowly tailored to the State's compelling interest, and is invalid as to non-incumbents. But invalidating the ban only as to challengers would fundamentally unbalance a restriction which**

the legislature clearly intended to apply to incumbents and challengers alike, and would defeat the legislature's clear intention as to this prohibition. We therefore decline to invalidate only part of this ban while upholding it with respect to incumbent candidates.

Accordingly, we affirm the decision holding these provisions invalid.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM January 24, 2008

SUBJECT: Amendments to CSHB 305(STA)
(Work Order Nos. 25-LS1226\K.1 & \K.2)

TO: Representative John Coghill
Attn: Rynnieva Moss

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies amendments 25-LS1226\K.1 & \K.2 for CSHB 305(STA). Please find below a brief explanation of the amendments.

Amendment \K.1: eliminating overlap
This amendment eliminates repetitive[1] statutory provisions found in CSSB 305(STA) (25-LS1226\K), relating to restrictions on the acceptance and solicitation of campaign contributions by legislators and legislative employees during a legislative session.

AS 15.13.072(d) (as found in existing statute) restricts the solicitation and acceptance of contributions during session by "candidates or individuals" who seek election or reelection to the state legislature. In State v. Alaska Civil Liberties Union, 978 P.2d 597 (1999), the Alaska Supreme Court reversed a lower court's ruling that Alaska's 1996 campaign finance reform statute was unconstitutional. What the Alaska Supreme Court did not reverse was the judgment of the lower court as to the Act's pre-election year and legislative session contribution bans. Consequently, the current AS 15.13.072(d) has been applied only to legislators by the Alaska Public Offices Commission.[2]

This amendment (1) repeals and reenacts AS 15.13.072(d), (2) eliminates CSHB 305(STA)'s amendment of AS 15.13.074, and (3) further clarifies language providing that only contributions made towards the election campaign of the legislator or legislative employee (accepting or soliciting the contribution) may be accepted or solicited within

---

[1] "Repetitive" rather than redundant. AS 15.13.072 regulates the solicitation and acceptance of campaign contributions; AS 15.13.074 prohibits the making of certain contributions.

[2] Testimony of Brooke Miles, House State Affairs Committee, January 22, 2008.

the 90 days preceeding that election, and only if those contributions are solicited or accepted outside the capital city or location in which the session is being held.

Amendment \K.2: campaign for federal office

This amendment removes language from CSHB 305(STA)'s changes to AS 24.60.031 that prohibit a legislative employee (AS 24.60.031(a)) or legislator (AS 24.60.031(c)) from soliciting or accepting a contribution or soliciting or accepting a promise or pledge to make a contribution for that legislative employee or legislator's campaign for federal office.

When I drafted the bill, it was my understanding that while a state law that sought to directly regulate candidates running for federal office would be preempted, that the state had a sufficient interest in shielding its legislative processes from corruption and the appearance of corruption to allow the state to regulate the conduct of its legislators and legislative employees who might be also incidentally running for federal office. My understanding was in error.

In Tepper v. Miller, 82 F.3d 989 (1996), the United States Court of Appeals for the Eleventh Circuit affirmed an injunction against the enforcement of a Georgia law[3] that prohibited Georgia General Assembly members from accepting contributions for federal election campaigns while the General Assembly was in session, holding that the statute was preempted by the Federal Election Campaign Act of 1971 (FECA) (as amended), 2 U.S.C. § 431 et seq.

FECA includes a specific preemption provision, 2 U.S.C. § 453, which reads: "*the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office*." (emphasis added) The House Committee that drafted the provision stated that the intention was "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal Office and that the Federal law will be the sole authority under which such elections will be regulated." See Tepper, 82 F.3d 989, 994 (1996), quoting from H.R. Rep. No. 1239, 93d Cong., 2d Sess. 10 (1974).

The Federal Election Commission (FEC), which is vested with "primary and substantial responsibility for administering and enforcing [FECA]" (Buckley v. Valeo, 424 U.S. 1, 109 (1976)), has also consistently expressed the opinion that FECA preempts state

---

[3] The Georgia Ethics in Government Act, O.C.G.A. § 21-5-35(a), provided "[n]o member of the General Assembly or that member's campaign committee or a public officer elected statewide or campaign committee of such public officer shall accept a contribution during a legislative session."

statutes limiting the time frame during which federal candidates may accept campaign contributions.[4]

The express language of FECA's preemption provision, the provision's legislative history, and the FEC's interpretation[5] make plain that a state law operating to regulate the period in which a category of citizens can accept contributions for a campaign for federal office is preempted.

Requested amendment dealing with overlap between CSHB 305(STA)'s AS 15.13.072(d), AS 15.13.074(j), and AS 24.60.031(a) and (c).
While there is overlap between CSHB 305(STA)'s AS 15.13.072(d), AS 15.13.074(j), and AS 24.60.031(a) and (c), some overlap may be desirable. AS 15.13 regulates state elections and AS 24.60 provides standards of conduct for the legislature. The chapters are two very different animals and the means of enforcement, sanctions, and scope of each chapter is not the same. The prohibitions in AS 24.60.031(a) and (c) bar the solicitation or acceptance of a contribution or the solicitation or acceptance of a *promise or pledge to make a contribution,* whereas the prohibitions in AS 15.13.072(d) and AS 15.13.074(j) speak only to the acceptance or solicitation of a contribution. I am not acquainted with the drafting history of these provisions and the rationales accounting for the difference.[6] 25-LS1226\K.1 addresses repetition in the Committee Substitute. I will await further direction from your office relating to the overlap between these provisions.

If you have any questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw:med
08-030.ljw

Enclosures

---

[4] See Op. FEC 1994-2 (advising that FECA preempts a Minnesota statute barring lobbyists from contributing to a candidate during a regular session of the state legislature); Op. FEC 1993-25 (advising that FECA preempts a Wisconsin statute restricting the time period during which lobbyists can contribute to candidates); Op. FEC 1992-43 (advising that FECA preempts a Washington statute barring state officials from accepting campaign contributions during legislative sessions).

[5] See Orloski v. FEC, 254 U.S. App. D.C. 111, 795 F.2d 156, 164 (D.C. Cir. 1986) (FEC interpretation of FECA should be given deference because FEC's statutory responsibility to issue advisory opinions "implies that Congress intended the Commission to fill in gaps left in the statute and to resolve any ambiguities in the statutory language").

[6] Important to note, that a violation of AS 15.13 may be criminally prosecuted, which would require a higher standard of proof than would a violation of AS 24.60. The difficulty of proving "beyond a reasonable doubt" the acceptance or solicitation of a promise or pledge to make a contribution, may account for the disparity in language.

25-LS1226\K.2
Bullard
1/24/08

AMENDMENT

OFFERED IN THE HOUSE
TO: CSHB 305(STA)

1 Page 2, line 27:
2 Delete "**municipal, state, or federal**"
3 Insert "**state or municipal**"
4
5 Page 2, line 31:
6 Delete "**municipal, state, or federal**"
7 Insert "**state or municipal**"
8
9 Page 3, line 10, following "**for**":
10 Delete "**public**"
11 Insert "**state or municipal**"
12
13 Page 3, line 24:
14 Delete "public"
15 Insert "state or municipal"
16
17 Page 3, lines 29 - 30:
18 Delete "municipal, state, or federal"
19 Insert "state or municipal"
20
21 Page 4, line 3, following "for":
22 Delete "public"
23 Insert "state or municipal"

1
2 Page 4, line 8:
3 Delete "municipal, state, or federal"
4 Insert "state or municipal"
5
6 Page 4, line 11, following "for":
7 Delete "public"
8 Insert "state or municipal"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM January 25, 2008

SUBJECT: Legislators who are candidates for federal office (HB 305)

TO: Representative Craig Johnson
Attn: Jeanne Ostnes

FROM: Alpheus Bullard
Legislative Counsel

You requested an amendment to House Bill 305 (25-LS1226\E) that was provided to your office on 1/19/2008. Subsequently, I've become better acquainted with the federal law governing candidates in federal elections.

When I drafted your amendment, it was my understanding that while a state law that sought to directly regulate candidates running for federal office would be preempted, that the state had a sufficient interest in shielding its legislative processes from corruption and the appearance of corruption to allow the state to regulate the conduct of its legislators and legislative employees who might be also incidentally running for federal office. My understanding was in error.

In Tepper v. Miller, 82 F.3d 989 (1996), the United States Court of Appeals for the Eleventh Circuit affirmed an injunction against the enforcement of a Georgia law[1] that prohibited Georgia General Assembly members from accepting contributions for federal election campaigns while the General Assembly was in session, holding that the statute was preempted by the Federal Election Campaign Act of 1971 (FECA) (as amended), 2 U.S.C. § 431 et seq.

FECA includes a specific preemption provision, 2 U.S.C. § 453, which reads: "*the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.*" (emphasis added) The House Committee that drafted the provision stated that the intention was "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal Office and that the Federal law will be the sole authority under which such elections will

---

[1] The Georgia Ethics in Government Act, O.C.G.A. § 21-5-35(a), provided "[n]o member of the General Assembly or that member's campaign committee or a public officer elected statewide or campaign committee of such public officer shall accept a contribution during a legislative session."

be regulated." See Tepper, 82 F.3d 989, 994 (1996), quoting from H.R. Rep. No. 1239, 93d Cong., 2d Sess. 10 (1974).

The Federal Election Commission (FEC), which is vested with "primary and substantial responsibility for administering and enforcing [FECA]" (Buckley v. Valeo, 424 U.S. 1, 109 (1976)), has also consistently expressed the opinion that FECA preempts state statutes limiting the time frame during which federal candidates may accept campaign contributions.[2]

The express language of FECA's preemption provision, the provision's legislative history, and the FEC's interpretation[3] make plain that a state law operating to regulate the period in which a category of citizens can accept contributions for a campaign for federal office is preempted.

TLAB:med
08-045.med

---

[2] See Op. FEC 1994-2 (advising that FECA preempts a Minnesota statute barring lobbyists from contributing to a candidate during a regular session of the state legislature); Op. FEC 1993-25 (advising that FECA preempts a Wisconsin statute restricting the time period during which lobbyists can contribute to candidates); Op. FEC 1992-43 (advising that FECA preempts a Washington statute barring state officials from accepting campaign contributions during legislative sessions).

[3] See Orloski v. FEC, 254 U.S. App. D.C. 111, 795 F.2d 156, 164 (D.C. Cir. 1986) (FEC interpretation of FECA should be given deference because FEC's statutory responsibility to issue advisory opinions "implies that Congress intended the Commission to fill in gaps left in the statute and to resolve any ambiguities in the statutory language").

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM January 23, 2008

SUBJECT: Candidates for federal office (HB 305; Work Order No. 25-LS1226\E)

TO: Representative Gabrielle LeDoux
Attn: Sonya Hymer

FROM: Alpheus Bullard
Legislative Counsel

You have asked whether federal law would operate to preempt an Alaska law that restricts the fundraising activities of a candidate for federal office. It is my opinion that any state law that prohibits the solicitation and acceptance of campaign contributions during a legislative session by a state legislator who is a candidate for federal office will be interpreted by a court as being preempted by federal law.[1]

In Tepper v. Miller, 82 F.3d 989 (1996) the United States Court of Appeals for the Eleventh Circuit affirmed an injunction against the enforcement of a Georgia law[2] that prohibited Georgia General Assembly members from accepting contributions for federal election campaigns while the General Assembly was in session, holding that the statute was preempted by the Federal Election Campaign Act of 1971 ("FECA") (as amended), 2 U.S.C. § 431 et seq.

FECA includes a specific preemption provision, 2 U.S.C. § 453, which reads: "*the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any*

---

[1] While such state laws might be directed toward the regulation of state legislators and only incidentally affect some candidates for federal office during certain times, it is the effect of the state law that matters in determining preemption, not its intent or purpose. See Tepper v. Miller, 82 F.3d 989, 995 (1996), citing Gade v. National Solid Wastes Management Ass'n, 505 U.S. 88, 105-06 (1988) ("In assessing the impact of a state law on the federal scheme, we have refused to rely solely on the legislature's professed purpose and have looked as well to the effects of the law.").

[2] The Georgia Ethics in Government Act, O.C.G.A. § 21-5-35(a), provided "[n]o member of the General Assembly or that member's campaign committee or a public officer elected statewide or campaign committee of such public officer shall accept a contribution during a legislative session."

provision of State law with respect to election to Federal office." (emphasis added) The House Committee that drafted the provision stated that the intention was "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal Office and that the Federal law will be the sole authority under which such elections will be regulated." See Tepper, 82 F.3d 989, 994 (1996), quoting from H.R. Rep. No. 1239, 93d Cong., 2d Sess. 10 (1974).

The Federal Election Commission ("FEC"), which is vested with "primary and substantial responsibility for administering and enforcing [FECA]" (Buckley v. Valeo, 424 U.S. 1, 109 (1976)), has also consistently expressed the opinion that FECA preempts state statutes limiting the time frame during which federal candidates may accept campaign contributions.[3]

The express language of FECA's preemption provision, the provision's legislative history, and the FEC's interpretation[4] make plain that a state law operating to regulate the period in which a category of citizens can accept contributions for a campaign for federal office is preempted.

If you have any questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw
08-026.ljw

[3] See Op. FEC 1994-2 (advising that FECA preempts a Minnesota statute barring lobbyists from contributing to a candidate during a regular session of the state legislature); Op. FEC 1993-25 (advising that FECA preempts a Wisconsin statute restricting the time period during which lobbyists can contribute to candidates); Op. FEC 1992-43 (advising that FECA preempts a Washington statute barring state officials from accepting campaign contributions during legislative sessions).

[4] See Orloski v. FEC, 254 U.S. App. D.C. 111, 795 F.2d 156, 164 (D.C. Cir. 1986) (FEC interpretation of FECA should be given deference because FEC's statutory responsibility to issue advisory opinions "implies that Congress intended the Commission to fill in gaps left in the statute and to resolve any ambiguities in the statutory language").

ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE

REPRESENTATIVE JOHN COGHILL, CHAIRMAN

State Capitol Juneau, AK 99801-1182 (907) 465-3719
1292 Sadler Way, Fairbanks AK 99701 (907) 456-5081

Date: January 30, 2008

To: Suzi Lowell, Chief Clerk

From: Representative John Coghill, Chairman
House Rules Committee

House Rules
JB Cjr

Re: House Rules Committee Schedule

Schedule for H[illegible] [illegible]es:

Monday, February 4th - 4:30 p.m. Room 106

HB 305 - "An Act relating to campaign fund raising by a legislator, legislative employee, or candidate for election to the legislature during a regular or special legislative session."

✓

RECEIVED 1/30/08 2:39
POSTED Sh 2:43 pm

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 305(STA)
(H) Publish Date: 1/23/08

Identifier (file name): HB305-DOA-APOC-1-18-08
Title: "An Act relating to campaign fund raising by a legislator..."
Sponsor: Representative Meyers
Requester: House State Affairs

Dept. Affected: Administration
RDU: AK Public Offices Commission
Component: AK Public Offices Commission
Component Number: 70

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2009**	**FY 2009**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: *(Attach a separate page if necessary)*

Section 1 of this bill amends the campaign dislcosure law to restrict any candidate for legislative office from soliciting or accepting campaign contributions during a legislative session in any location in which the legislature is convened. This section of law is not enforceable by the Public Offices Commission, under the ruling of the Alaska Supreme Court in State v. Alaska Civil Liberties Union (ACLU), No. 5108, 199 WL 21944 (Alaska April 16, 1999). See Attorney General's Opinion 661-99-0513, June 22, 1999. This bill will not increase the operating costs for APOC.

Prepared by: Brooke Miles — Phone 907-334-1726
Division: Alaska Public Offices Commission — Date/Time 1/18/2008 9:16 a.m.
Approved by: Kevin Brooks, Deputy Commissioner, Department of Administration — Date 1/18/2008

(Revised 11/19/2007 OMB)

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: January 28, 2008

TO: Representative John Coghill, Chairman
House Rules Committee

FROM: Representative Kevin Meyer

RE: Hearing Request for House Bill 305 *Campaign Fundraising During Sessions*

Please schedule HB 305 *Campaign Fundraising During Sessions* for a hearing in the House Rules Committee at your earliest convenience.

HB 305 amends the legislative ethics act to prohibit fundraising during a legislative session for any political office or ballot measure.

Included in this packet:

- CSHB 305 (STA) 25-LS1226\K
- HB 305 25-LS1126\E
- Sponsor Statement
- Sectional Analysis
- Zero Fiscal Note, APOC
- Memorandum, Changes to HB 305 in CSHB305 STA
- Backup Information
    - Legislative Legal Services Memorandum, January 25, 2008
    - Legislative Research Report; *State Laws on Campaign Fundraising During a Legislative Session.*
    - Select Committee on Legislative Ethics Advisory Opinion 94-04
    - Legislative Legal Services Memorandum, April 23, 1999
    - Alaska Department of Law Memorandum, June 22, 1999

Thank you for your consideration of this request. If you have any questions, please feel free to contact me or my staff, Mike Pawlowski at x4945.

Email: Representative_Kevin_Meyer@legis.state.ak.us • **Toll Free:** (866) 465-4945
Session: State Capitol, Juneau, Alaska 99801-1182 • **Phone:** (907) 465-4945 **Fax:** (907) 465-3476
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • **Phone:** (907) 269-0199 **Fax:** (907) 269-0197

adn.com
Anchorage Daily News

Print Page | Close Window

Uh-oh

Federal law inhibits reform move

(01/31/08 00:50:15)

A useful reform measure pending in the Alaska Legislature has run afoul of a decade-old federal court ruling from the other side of the country.

Alaska lawmakers are considering whether to ban legislators from collecting campaign contributions for any office -- state, local or federal -- while the Legislature is in session. The move would close a troublesome loophole in the legislative ethics law.

A legislator cannot take contributions for a state legislative race during the legislative session but can take money for a statewide, federal or local election contest. That loophole allows special interests to buy special access to ambitious legislators while they are reviewing and voting on legislation.

Closing this loophole sounds like it would be a pretty simple matter.

Not so -- at least when it comes to legislators aiming for federal office.

Georgia's Legislature long ago passed a fundraising ban like the one being considered here in Alaska. A disgruntled Georgia legislator sued. In 1996, he won a federal appeals court ruling that struck down the fundraising restriction as it applies to federal election campaigns. Georgia's restriction on its legislators' fundraising, the court said, was pre-empted by federal election law. The U.S. Supreme Court let that ruling stand.

That leaves Alaska legislators with a tough choice. They can respect the ruling and pass a limited reform that leaves intact the federal election fundraising loophole. Or the Legislature could contradict the federal court ruling and tell its members they can't raise any campaign money during the session -- period.

We know which choice would work best for Alaskans. During the session, legislators should be working for people who elected them, instead of dialing for campaign dollars in any race -- especially an expensive federal contest that covers the entire state.

And who knows, there's a decent chance that, given a second look at the question, the federal courts might rule the other way.

The appeals court split 2-1 in the Georgia case, and the dissenting judge made an excellent point. The Georgia restriction, he said, doesn't apply to all Georgia candidates for federal office, so it is not an illegal attempt to meddle in federal elections, an area where the federal government is the sole boss. The Georgia Legislature was merely saying what its members were not allowed to do. That's a matter for the Georgia Legislature, not the federal government, to decide.

In the decade since that ruling, the U.S. Supreme Court has struck down some federal laws because they go too far in treading on state government powers. New legal standards set in those

cases might help reverse the misguided decision in the Georgia case.

Given the corruption that afflicted the Alaska Legislature, Alaskans want and need legislators to uphold the strongest possible ethical standards. Include a federal election fundraising ban in the legislative ethics reform -- and should any lawmaker decide to challenge it, let's see if the federal courts will come to their senses.

BOTTOM LINE: The tighter the ban on campaign fundraising during a legislative session, the better.

He's ba-a-ck

State doesn't need this help

Ex-Gov. Frank Murkowski is back, "intending to join gas line debate."

As Dave Barry would say, we are not making this up.

This is the governor who gave away the store in his proposed gas line contract with Exxon, Conoco and BP. In return, he got little more than a promise the Big Three would keep sort-of-working on a gas line, which would get built whenever it suited them.

This is the governor who derailed his own gas line promotion efforts by indulging those same three multi-national companies' additional demand for "certainty" on oil taxes.

But hey, Murkowski's return to the gas line issue is a truly inspirational act of political hubris. Maybe it will inspire other discredited political figures to return to the scene of the disasters they helped create.

Imagine, George Bush might pop up a few months after he leaves office and volunteer to help the new president figure a way out of Iraq.

Michael Brown, President Bush's horse-fancying FEMA director, might come back and offer to help reconstruct post-hurricane New Orleans.

Heck, ex-president Bill Clinton might volunteer to teach abstinence-only classes to teenage girls.

How could ex-Gov. Murkowski be of most help in bringing Alaska a North Slope gas line?

By heeding the verdict of Alaska voters and quietly returning to his political retirement.

BOTTOM LINE: Frank Murkowski help with the state's gas line promotion efforts? No thanks.

Print Page | Close Window

Copyright © Mon Feb 4 16:22:07 UTC-0900 20081900 The Anchorage Daily News (www.adn.com)

Ballot proposition —

Am #1 adopted

Guttenberg April — Anchorage only

at least 3 states have law

2 states have won court challenge

$10,000 a day needed to run for Congress

25-LS1226\K.2
Bullard
1/24/08

AMENDMENT

OFFERED IN THE HOUSE
TO: CSHB 305(STA)

1 Page 2, line 27:
2 Delete "**municipal, state, or federal**"
3 Insert "**state or municipal**"
4
5 Page 2, line 31:
6 Delete "**municipal, state, or federal**"
7 Insert "**state or municipal**"
8
9 Page 3, line 10, following "**for**":
10 Delete "**public**"
11 Insert "**state or municipal**"
12
13 Page 3, line 24:
14 Delete "public"
15 Insert "state or municipal"
16
17 Page 3, lines 29 - 30:
18 Delete "municipal, state, or federal"
19 Insert "state or municipal"
20
21 Page 4, line 3, following "for":
22 Delete "public"
23 Insert "state or municipal"

NOT OFFERED Meyer wants court challenge

L

1
2 Page 4, line 8:
3 Delete "municipal, state, or federal"
4 Insert "state or municipal"
5
6 Page 4, line 11, following "for":
7 Delete "public"
8 Insert "state or municipal"

original copy may be used. The original of the enrolled copy is used for certification by each house for transmittal to the governor.

HISTORY OF BILLS

Rule 38. History of Bills. A separate history of the bills of each house shall be maintained for both houses by the Legislative Affairs Agency. The agency shall, in cooperation with the legislators who chair the Rules Committees and the chief clerk and senate secretary, maintain a current record on all bills and resolutions and publish a weekly report on the status of the bills of each house.

ACTION ON BILLS

Rule 39. Action on Bills. (a) Number of readings. A bill may not become law unless it has passed three separate readings in each house on three separate days, except that any bill may be advanced from second to third reading on the same day by a three-fourths vote of the full membership of the house considering it. (Constitution, Art. II, Sec. 14.)

(b) First Reading. The first reading consists of a reading aloud by the clerk or secretary of the following information: the house of origin, the bill number, the sponsor, and the title of the bill, e.g., "In the House, House Bill No. ..., by ..... and ...., A bill for an Act entitled, 'An Act relating to a code of ethics for state employees.'" The bill is then referred by the presiding officer to one or more committees. The house may by a majority vote of the full membership of the house refer the bill to any other standing or special committee.

(c) Second Reading. When a bill appears on the calendar for second reading it is read in the same manner as in the first reading unless the members present order by a majority vote of the full membership of the house that it be read in full. When the second reading of the bill and the accompanying committee report is completed the bill is then before the house for amendment. If a proposed amendment is tabled it does not carry with it or prejudice the bill. When all amendments have been made the presiding officer directs the clerk or secretary to have the bill engrossed with all amendments approved by the house and to certify its proper engrossment on the following legislative day. When the clerk or secretary reports the bill back properly engrossed it is then delivered to the Rules Committee for placement on the calendar for third reading and final consideration. A house may, by a three-fourths vote of the full membership of the house, order that the bill be considered engrossed upon the completion of the second reading for the purpose of advancing it from second to third reading on the same day.

(d) Third Reading. On its third reading the bill is read by heading and title only. The question on third reading of a bill is upon its final passage and no amendments may be considered. No bill may become law without an affirmative vote of the majority of the membership of each house. The yeas and nays on final passage, noting the name and vote of each member, shall be entered in the journal. The bill is then engrossed or enrolled, as appropriate, at the direction of the clerk or secretary.

(e) If a bill or portion of a bill contains matter changing a supreme court rule governing practice and procedure in civil or criminal cases, the bill must contain a section expressly citing the rule and noting what change is being proposed. The section containing the change in a court rule must be approved by an affirmative vote of two-thirds of the full membership of each house. If the section effecting a change in the court rule fails to receive the required two-thirds vote, the section is void and without effect and is deleted from the bill. The fact that a bill contains a section which changes a court rule shall also be noted in the title of the bill.

(f) If a bill or portion of a bill contains material which has an effective date other than the date which is 90 days after the bill becomes law, the bill must contain a section or sections setting out the proposed effective date or dates. The section or sections relating to the effective dates must be approved by an affirmative vote of two-thirds of the full membership of each house. If a section setting out an effective date fails to receive the required two-thirds vote in either house, the section is void and without effect and is deleted from the bill. The fact that a bill contains a section which sets out an effective date shall also be noted in the title of the bill.

(g) A bill may be recommitted any time before passage.

COURSE OF BILLS

Rule 40. Course of Bills. When a bill has passed the house in which it originated and has been certified as properly engrossed by the clerk or secretary and photographed for duplication (if changes have been made), it shall be signed by the presiding officer and the clerk or secretary. The clerk or secretary shall transmit the original and committee copies of the bill on receipt to the other house. When the second house receives the message accompanying the engrossed bill and reporting its passage, the bill shall be read by the clerk or secretary for the first time and then referred by the presiding officer to one or more committees for subsequent action by that house.

AMENDMENTS IN OTHER HOUSE

Rule 41. Amendments in Other House. (a) When a bill, resolution, or citation passed in one house is amended in the other house, the bill, resolution, or citation with certified amendments is returned to the house of origin requesting concurrence. The vote on concurrence in amendments is taken by the calling of the roll and the recording of the yeas and nays in the journal. Adoption requires a

ing the amendments, when bills are printed in this manner. The copy of the bill, when reported by the committee as correctly engrossed, is substituted for the official original bill on the files.

Sec. 736. Third Reading of Bills

1. On third reading, a bill is presented for consideration and passage.

2. Amendments on third reading of a bill are not favored but are permitted. After passage, the title of a bill may be amended to conform to the body, but the body of a bill is no longer subject to amendment, except upon reconsideration.

3. Motions affecting bills on third reading are not in order, even under that order of business, until the particular bill is reached upon the calendar.

4. A motion or request for the reading of a bill for the information of the members is not in order after the roll call has been ordered.

Sec. 737. Passage of Bills

1. The word "passage," used in connection with legislation, refers to the compliance with all the forms necessary to give force and effect to the legislation.

Sec. 735, Par. 2: Cushing's Legislative Assemblies, Sec. 2284.

Sec. 736, Par. 1: Jefferson, Sec. XI.

Sec. 736, Par. 2: Jefferson, Sec. XI.

Sec. 736, Par. 3: N.Y. Manual, p. 419.

Sec. 736, Par. 4: N.Y. Manual, p. 448.

Sec. 737, Par. 1: People v. Coffin (1917), 279 Ill. 401, 117 N.E. 185.

2. A bill is not duly enacted until it has been voted on affirmatively by both houses in its final form.

3. Under the U.S. system of government, the house and senate are separate and independent bodies, and their votes are to be taken and counted separately.

4. The fact that there is agreement between the houses as to the contents of a bill should appear with certainty, but it is sufficient if it be clear from the record as a whole that the bill, as finally passed by both houses, was identical.

Sec. 737, Par. 2: Chicago B. & Q. R. Co. v. Smyth (1900), 103 F. 376; Jefferson County v. Crow (1904), 14 Ala. 126, 37 So. 469; Rogers v. State of Arkansas (1904), 72 Ark. 565, 82 S.W. 169; State of Connecticut v. Savings Bank of New London (1906), 79 Conn. 141, 64 A. 5; Volusia County v. State of Florida (1929), 98 Fla. 1166, 125 So. 375; People v. Knopf (1902), 188 Ill. 340, 64 N.E. 843; Norman v. Ky. Board of Managers (1892), 93 Ky. 537, 20 S.W. 901; State of Louisiana *ex rel.* Caillouet v. Laiche (1901), 105 La. 84, 29 So. 700; County Commissioners of Washington v. Baker (1922), 141 Md. 623, 119 A. 461; Ellis v. Parsell (1894), 100 Mich. 170, 58 N.W. 839; Johnson v. City of Great Falls (1909), 38 Mont. 369, 99 P. 1059; State of Nebraska v. Cox (1920), 105 Neb. 175, 178 N.W. 913; *In re* Opinion of the Justices (1857), 35 N.H. 579; *In re* Jaegle (1912), 83 N.J.L. 313, 85 A. 214; Tyson v. City of Salisbury (1909), 151 N.C. 418, 66 S.E. 532; State of North Dakota v. Schultz (1919), 44 N.D. 269, 174 N.W. 81; State of Oregon v. Boyer (1917), 84 Ore. 513, 165 P. 587; State of Tennessee v. Persica (1914), 130 Tenn. 48, 168 S.W. 1056; Wilson v. Young County Hardware & Furniture Co. (Tex. Civ. App. 1924), 262 S.W. 873; Smith v. Mitchell (1911), 69 W.Va. 481, 72 S.E. 755; State of Wisconsin v. Wendler (1896), 94 Wis. 369, 68 N.W. 759; Arbuckle v. Pflaeging (1912), 20 Wyo. 351, 123 P. 918.

Sec. 737, Par. 3: Belote v. Coffman (1915), 117 Ark. 352, 175 S.W. 37.

Sec. 737, Par. 4: Perry v. State of Arkansas (1919), 139 Ark. 227, 214 S.W. 2; Walnut v. Wade (1880), 103 U.S. 683; Butler v. Board of Directors (1912), 103 Ark. 109, 146 S.W. 120; State of

25-LS1226\K

CS FOR HOUSE BILL NO. 305(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 1/23/08
Referred: Rule

Sponsor(s): REPRESENTATIVES MEYER, Chenault, Fairclough, Olson, Neuman, Ramras

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to campaign fund raising during a regular or special legislative session**
2 **~~by a candidate for election to the legislature, a legislator, or a legislative employee~~ ; and**
3 **providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 15.13.072(d) is amended to read:
6 (d) A **legislator or legislative employee** [CANDIDATE OR AN
7 INDIVIDUAL] who has filed with the commission the document necessary to permit
8 that individual to incur election-related expenses under AS 15.13.100
9 **(1)** for election [OR REELECTION] to the state legislature may not
10 solicit or accept a contribution while the legislature is convened in a regular or special
11 legislative session unless the solicitation or acceptance occurs
12 **(A)** [(1)] during the 90 days immediately preceding an election
13 in which the candidate or individual is a candidate; and
14 **(B)** [(2)] in a place other than the capital city **or a location in**

1 **which the legislature is convened in a regular or special session if the**
2 **location is other than the capital city;**
3 **(2) who is a legislator or legislative employee and who is seeking**
4 **election to state office or to municipal office may not solicit or accept a**
5 **contribution for the legislator or legislative employee's own campaign while the**
6 **legislature is convened in a regular or special legislative session unless the**
7 **solicitation or acceptance occurs**
8 **(A) during the 90 days immediately preceding an election in**
9 **which the legislator or legislative employee is a candidate; and**
10 **(B) in a place other than the capital city or a location in**
11 **which the legislature is convened in regular or special session if the**
12 **location is other than the capital city**.
13 * Sec. [illegible]. AS 15.13.07[illegible] is amended by adding a new subsection to read:
14 ([illegible]) While the legislature is convened in a regular or special legislative session,
15 a legislator may not solicit or accept a contribution to be used for the purpose of
16 influencing the outcome of an election under this chapter unless
17 (1) it is an election in which the legislator is a candidate;
18 (2) the solicitation or acceptance occurs during the 90 days
19 immediately preceeding that election; and
20 (3) the solicitation or acceptance occurs in a place other than the
21 capital city or a location in which the legislature is convened in a regular or special
22 session if the location is other than the capital city.
23 * Sec. 3. AS 24.60.031(a) is amended to read:
24 (a) A [LEGISLATOR OR] legislative employee may not
25 (1) on a day when either house of the legislature is in regular or special
26 session, solicit or accept a contribution or a promise or pledge to make a contribution
27 for a campaign for **municipal, state, or federal office** [THE STATE
28 LEGISLATURE]; however, a [LEGISLATOR OR] legislative employee may, except
29 in the capital city **or in the location in which the legislature is convened in regular**
30 **or special session if the location is other than the capital city**, solicit or accept a
31 contribution, promise, or pledge for a campaign for **municipal, state, or federal**

1 **office** [THE STATE LEGISLATURE] that occurs during the 90 days immediately
2 preceding **the** [AN] election **for that office**; **or**
3 (2) accept money from an event held on a day when either house of the
4 legislature is in regular or special session if a substantial purpose of the event is to
5 raise money on behalf of the [MEMBER OR] legislative employee for [STATE
6 LEGISLATIVE] political purposes; however, this paragraph does not prohibit a
7 [LEGISLATOR OR] legislative employee from accepting money from an event held
8 in a place other than the capital city **or a location in which the legislature is**
9 **convened in ~~regular or~~ special session if the location is other than the capital city**
10 during the 90 days immediately preceding an election **for public office in which the**
11 **legislative employee is a candidate** [; OR
12 (3) IN A CAMPAIGN FOR THE STATE LEGISLATURE, EXPEND
13 MONEY THAT WAS RAISED ON A DAY WHEN EITHER HOUSE OF THE
14 LEGISLATURE WAS IN A LEGISLATIVE SESSION BY OR ON BEHALF OF A
15 LEGISLATOR UNDER A DECLARATION OF CANDIDACY OR A GENERAL
16 LETTER OF INTENT TO BECOME A CANDIDATE FOR PUBLIC OFFICE;
17 HOWEVER, THIS PARAGRAPH DOES NOT APPLY TO MONEY RAISED IN A
18 PLACE OTHER THAN THE CAPITAL CITY DURING THE 90 DAYS
19 IMMEDIATELY PRECEDING AN ELECTION].
20 * **Sec. 4.** AS 24.60.031 is amended by adding a new subsection to read:
21 (c) A legislator may not
22 (1) on a day when either house of the legislature is in regular or special
23 session, solicit or accept a contribution or a promise or pledge to make a contribution
24 (A) for the legislator's own campaign for public office, unless
25 the solicitation, acceptance, promise, or pledge occurs in a place other than the
26 capital city or a location in which the legislature is convened in ~~regular or~~
27 special session if the location is other than the capital city during the 90 days
28 immediately preceding the election in which the legislator is a candidate;
29 (B) for another candidate in an election for municipal, state, or
30 federal office; or
31 (C) to influence a state ballot proposition or question;

1 (2) accept money from an event held on a day when either house of the
2 legislature is in regular or special session if a substantial purpose of the event is to
3 raise money on behalf of the legislator's campaign for public office; however, this
4 paragraph does not prohibit a legislator from accepting money from an event held in a
5 place other than the capital city or a location in which the legislature is convened in
6 ~~regular or~~ special session if the location is other than the capital city during the 90
7 days immediately preceding an election in which the legislator is a candidate; or
8 (3) in a campaign for municipal, state, or federal office, expend money
9 that was raised on a day when either house of the legislature was in a legislative
10 session by or on behalf of a legislator under a declaration of candidacy or a general
11 letter of intent to become a candidate for public office; however, this paragraph does
12 not apply to money raised in a place other than the capital city or a location in which
13 the legislature is convened in ~~regular or~~ special session if the location is other than the
14 capital city during the 90 days immediately preceding an election in which the
15 legislator is a candidate.
16 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT #1

offered in the House

by Representative Crawford

on CS HB 305 (RLS)\L

Page 3, Lines 9- 10

delete

or;

(C) to influence a state ballot proposition or question

New Text Underlined [DELETED TEXT BRACKETED]