

ALASKA LEGISLATURE COMMITTEE FILES 1900-1900

3667 HSTA HB 144

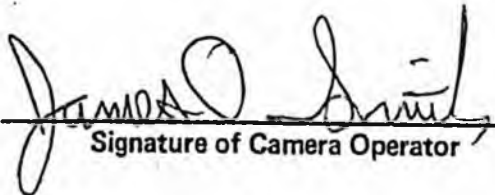
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Signature of Camera Operator


Date

HB

1

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COMMITTEE REPORT

HOUSE

(7)

FURTHER: JUDICIARY

1/30/85

Date: 4/12/85

The Committee on STATE AFFAIRS has had HR 144

"An Act relating to political campaign contributions."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HR 144 same title
 new title
- and recommends do pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Handwritten Signature]

[Handwritten Signature]

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[Handwritten Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Handwritten Signature]

[Handwritten Signature]

[Handwritten Signature]
CHAIRMAN

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 144
 Title: Relating to political
campaign contributions.
 Sponsor: Marrin & Marrou
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: _____
Independent Operations
 BRU, Program or Subprogram(s) Affected: _____
Alaska Public Offices Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING	-	-	-	-	-	-
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
POSITIONS:	-0-	-0-	-0-	-0-	-0-	-0-
FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary

No affect on the Alaska Public Offices Commission, Department of Administration.

Prepared By: Theda S. Pittman Phone: 276-4176
 Division: Alaska Public Offices Commission Date: 2/11/85
 Approved by Commissioner: Lisa Rudd Date: 2-21-85
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

ANALYSIS OF HB144

"An act relating to political campaign contributions."

By Martin and Marrou

AS 43.05.085, relates to the names of those who claim credit under 43.20.013(a) (the political contribution credit). Lines 12 and 13 of HB144 include a technical change offered by the revisor.

Lines 15, 16, and 17 change the requirement for the release of the names of political groups or candidates that have been claimed under AS 43.20.013(a). (Keep in mind that this does not refer to a list of who made the contribution, only the groups and candidates that have been claimed as creditable.) Under present law the lists of campaigns that have been claimed as creditable cannot be released except upon order of the supreme court.

From a historical perspective the reasons for this language are clear. When the program began it offered an income tax credit. If a resident made a contribution to a political candidate or group, the amount of that contribution (up to \$50) could be credited against the amount of personal income tax they owed to the state. One concern at that time was the release of information regarding the personal business of the taxpayer. In response to this concern, the legislature decided to keep private all information regarding the political tax credit.

In the second special session of 1980, the legislature repealed the state personal income tax. Because the income tax credit was directly related to the income tax, it was rendered moot. In its place the legislature adopted 43.20.013(a) which is not a tax credit, but a contribution credit. In reality, a direct payment.

Whereas the original program (the tax credit) simply deferred income the state would have received, the new program (the contribution credit) actually paid out state, and thus, public funds. Because private taxpayer information is no longer a concern, and because the monies being expended are public funds, the lists of what kinds of groups and candidates are being claimed should be made public.

Original sponsors: Martin and Marrou

1
2 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

3 CS FOR HOUSE BILL NO. 144 (State Affairs)

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

7 For an Act entitled: "An Act relating to political campaign contribu-
8 tions."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 43.05.085 is amended to read:

11 Sec. 43.05.085. LIST OF CONTRIBUTIONS [CONTRIBUTORS]. The
12 commissioner of revenue shall prepare and furnish to the Alaska Public
13 Offices Commission by July 1 of each year a list containing the total
14 amount of credits received by each candidate and group to which a
15 contribution was made by an individual [OF ALL PERSONS] claiming a
16 credit under AS 43.20.013(a). The list becomes public information
17 under AS 09.25.110 - 09.25.120 on its delivery to the Alaska Public
18 Offices Commission [, INCLUDING THE DATES, IF AVAILABLE, AND
19 CANDIDATES OR GROUPS TO WHICH THE CONTRIBUTION WAS MADE. THESE LISTS
20 OR PARTS OF THEM MAY NOT BE MADE PUBLIC EXCEPT ON ORDER OF THE SUPREME
21 COURT OF THE STATE].
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April 4, 1985

ANNOUNCEMENT:

HB 247 "An Act relating to games of chance and contests of skill." which passed out of this committee yesterday, has come back to committee from the legal department in the form of a committee substitute which incorporates the amendments made to HB 247 yesterday. One amendment offered by the Department of Revenue was incorrectly drafted so the legal department has discussed the intent of the committee with relation to the amendment with the chair/staff, so that the language in the committee substitute before the committee is legally correct. NEED TO MOVE THIS CSHB 247 (SA) and adopt it.

HB 144 "An Act relating to political campaign contributions."

Dept. of Revenue has suggested substitute language on lines 15-17:

This list, once prepared and furnished to the Alaska Public Offices Commission, shall become public information under AS 09.25.110 - 09.25.120.

This would allow the Department to prepare and furnish a list to APOC, which would then become public information. It would avoid the Department having to prepare custom computer runs and responding to requests all year long. Basically, under this amendment, the only information to become public would be the list the Department would provide to APOC. If this amendment is not adopted, there will be fiscal impact.

Erwin Jones, Director of Admin. Services is here to testify for the Department.

There is some concern that this list will lack statistical credibility since a person can contribute to many candidates or groups and only claim refundable credit for one candidate or groups. The list is open to manipulation of information. BUT IT IS PUBLIC INFORMATION!

Alaska State Legislature

REPRESENTATIVE
TERRY MARTIN

DISTRICT 8
CHAIRMAN—LABOR AND COMMERCE COMMITTEE
PHONE 465-3573



3960 REKA DRIVE—B5
ANCHORAGE, AK 99504
PHONE 333 6990

DURING LEGISLATURE
POUCH V
STATE CAPITOL
JUNEAU, AK 99811
PHONE 465-3754

1982 POLITICAL CONTRIBUTION REFUND CLAIMS

Political Contribution Claims
 Individuals With More Than \$ 2500
CONTRIBUTIONS

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
669	Goll, Peter	2,530.00
710	Mystrom, Rick	2,550.00
299	Gilman, Don	2,640.00
431	Duncan, Jim	2,648.00
664	Tischer, Mae	2,705.00
369	Benshoof, Geraldine	2,797.00
421	Garrigues, James	2,850.00
859	Knowles, Tony	2,870.00
706	Metcalf, Ray	2,925.00
423	Angvik, Jane	2,965.00
459	Lindauer, John	3,024.00
452	Dapcevich, John	3,050.00
450	Carlson, John	3,149.00
463	Sackett, J	3,150.00
512	Gorsuch	3,183.00
882	Collins, Virginia	3,210.00
81	Adams, Al	3,350.00
306	Schmedlen, Doug	3,406.00
787	Sandvick, E	3,431.00
236	Schultz, D	3,435.00
622	Woods, Noel	3,466.00
490	Fanning, K	3,493.00
890	Furnace, W	3,506.00
620	Koponen, N	3,524.00
654	Carney, Pat	3,726.00
828	Janson, Sue	3,793.00
759	Bettisworth R	3,855.00
297	Clocksinn, Don	3,929.00
350	Murkowski, F	4,025.00
883	Dal Piaz, V	4,128.00
880	Fischer, V	4,330.00
672	Smith, Phillip	4,711.00
557	Holloway, M	4,715.00
119	Sturgulewski	4,755.00
507	Albertson, Lamont	4,832.00
429	Ayers, Jim	4,862.00
140	Fahrenkamp, B	4,987.00
563	Szymanski, M	5,040.00
462	Ringstad, John	5,151.00
541	Carpenter, M	5,236.00
845	Bucholdt, Thelma	5,298.00
641	Freeman, O	5,551.00
670	Pettyjohn, F	5,660.00
186	Bussell, C	6,060.00
712	Malone, Hugh	6,060.00

Information By:
 Rep. Terry Martin
 8/84

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
911	Brown, Fred	6,417.00
468	Faiks, J	6,781.00
552	Sikorski, M	6,910.00
296	Bennett, Don	7,358.00
192	O'Connell, C	7,432.00
444	Hayes, Joe	7,787.00
773	Rose, Dave	8,175.00
386	Paucher, Red	8,485.00
142	Allen, Bill	9,809.00
536	Colletta, M	9,865.00
143	Hudson, Bill	13,575.00
302	Young, Don	14,235.00
539	Roberts, Malcolm	22,440.00
230	Cowper	29,963.00
746	Randolph, D	33,162.00
831	Miller, Terry	78,177.00
004	Sheffield/McAlpine	175,157.00
008	Fink/Colletta	189,396.00

TOTAL CONTRIBUTIONS: \$809,685.00

Information By:
Rep. Terry Martin
8/84

Political Contribution Claims
Groups With More Than \$2500

CONTRIBUTIONS

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
901	Womens Political Caucus	2,515.00
649	PACE NEA PAC	2,892.00
910	AGC PAC	3,050.00
627	National Rifle Assoc	3,566.00
88	Alive Teamsters	3,992.00
683	Pol Action Comm	4,389.00
346	Fish PAC	4,775.00
22	Builders PAC	4,932.00
189	Choice for Alaskans	5,238.00
005	Democrats	7,191.00
234	Positive Action, Citizens for	6,363.00
49	Laborers Political Education Committee	8,902.00
320	Employees Political Inf Comm	9,671.00
617	NEA Ak Pace	11,519.00
39	Environmental Committee	19,878.00
007	Libertarians	22,820.00
694	Personal Liberties Comm	25,685.00
174	Capital Access Committee	35,591.00
396	Equal Hunting and Fishing	38,527.00
843	Alaska Committee	57,144.00
003	Republicans	63,516.00

TOTAL CONTRIBUTIONS: \$342,851.00

Information By:
Rep. Terry Martin
8/84

UNIONS

CONTRIBUTIONS

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
17	AFGE PAC	365.00
18	AFL-CIO COPE	1,945.00
49	Laborers Political Education Committee	8,902.00
59	Public Employees Assn	300.00
67	Laboters	100.00
88	Alive Teamsters	3,992.00
93	Postal Workers Union	12.00
95	Union Control	25.00
112	APEA	430.00
168	C O R E	100.00
397	IBEW Vol Pol Fund	34.00
407	Intl Union	10.00
410	IUOE Local 302	50.00
466	Journeyman	100.00
471	Central Labor, Juneau	100.00
475	Labor Couns, Juneau	50.00
523	Local 302 PAC	134.00
524	Local 341 Education	100.00
525	Local 375	300.00
526	Local 71 PAC	33.00
527	Local United Assoc	100.00
531	LUPAC	100.00
576	Master Mates and Pilots	100.00
636	Operations Pol	36.00
637	Opty Eng 302 Fbks	50.00
677	Pol and Education Comm	200.00
678	Pol Arm	110.00
679	Pol Education Comm	300.00
683	Pol Action Comm	4,389.00
836	Teamsters	225.00
864	Plumbers and Pipefitters	346.00
865	Oper Engineers, Union of	100.00
867	Union PAC Local 302	100.00
868	Union Pol Awareness	100.00
TOTAL CONTRIBUTIONS:		\$23,338.00

Information By:
 Rep. Terry Martin
 8/84

Education PACs

CONTRIBUTIONS

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
15	AEA Pace	775.00
84	Education (AK)	100.00
104	Education Association Pace Anchorage	5.00
313	Education Comm	105.00
332	Education Assoc PAC, Fbks	390.00
337	FEA PACE	1,748.00
424	JEA PACE	103.00
473	Education Assoc, Juneau Pace	25.00
480	Education, PACE Juneau	50.00
486	KBEA PACE	275.00
500	Education Assoc, Kodiak Bor	400.00
592	Education Assoc, National	100.00
595	Education Assoc, National	300.00
598	Education Assoc, National	200.00
617	NEA Ak Pace	11,519.00
644	PAC	100.00
645	PACE	100.00
646	PAC fnd	200.00
649	PACE NEA PAC	2,892.00
878	VEA PACE	50.00
TOTAL CONTRIBUTIONS:		\$19,437.00

Information By:
Rep. Terry Martin
8/84

Questionable Donations

CONTRIBUTIONS

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
25	Cabaret Hotels	200.00
37	Alaska Credit Union	370.00
44	Fur Trappers	20.00
50	Legis (Ak)	100.00
71	Real Estate	20.00
86	Alcohol and Drug Abuse	150.00
90	Cranston, Allen	250.00
92	Alyeska Airways	45.00
100	American Security	35.00
118	Arts for Anchorage	10.00
123	Audobon Society	50.00
155	Bond Issue	55.00
170	Campaigner Pub	750.00
172	Candidates Raffle	250.00
188	Cheyenne ARFA Combin	100.00
213	Combined Fed Campaign	414.00
227	Conserv Caucus	365.00
253	Democratic Congressional Campaign	75.00
254	Democratic congressional Campaign	25.00
259	Demo Natl Comm	95.00
263	Democratic Congress Camp	100.00
265	Democratic National comm	125.00
266	Democratic National Party	25.00
270	Democratic Congress	30.00
308	E Systems Citizens	50.00
315	Roosevelt, Eleanor	125.00
330	Farthest North Club	60.00
340	Federal Campaign	48.00
357	Fusion Energy Found	350.00
363	Bush, George	50.00
373	Rep Victory Fund	4,528.00
380	Gun owners of Am	130.00
384	Handgun Control	45.00
401	Inaugural Ball	490.00
403	Institute for Leg Action	150.00
408	Isaac Walton	200.00
428	Helms, Jesse	25.00
487	KCHS Auditorium	10.00
502	Kodiak Times	72.00
503	KOTV	156.00
506	L-P Corp	20.00
513	Legislative Comm	35.00
546	Natl Tax Limitation	30.00
553	Metzenbaum	25.00
570	MNPL	200.00
574	Udall, Morris	178.00
579	North Pole H-S Fund	50.00

Information By:
 Rep. Terry Martin
 8/84

Questionable Donations

<u>Record ID</u>	<u>Name</u>	<u>Amount (\$)</u>
591	Congress Club, National	540.00
592	Education Assoc, National	100.00
595	Education Assoc, National	300.00
596	Conser.ative Comm,Nat	205.00
597	Demo, National	250.00
598	Education Assoc, National	200.00
604	Rep Fund, National	890.00
609	Rep Cong Comm, National	2,652.00
613	National Unity Comm	50.00
614	NCPAC Heritage Found	50.00
625	NOW ERA PAC	1,040.00
626	NR Congressional	20.00
627	National Rifle Assoc	3,566.00
629	NRCC	295.00
630	National Comm Effective Cong	105.00
632	Organization of Women, National	305.00
638	Oral Max Fac Surg	45.00
640	Hatch, Orrin	60.00
652	Political Action Fund	253.00
681	Pol Victory Fund	125.00
684	Political Liberties	100.00
685	Politician Caucus	100.00
718	Rep Natl Comm	14,357.00
728	Rep Natl Task Force	320.00
731	Rep Pres Task Force	3,110.00
732	Rep Sustaining Fund	763.00
793	Sea Turtle Rescue FN	57.00
810	Spenard Lions Club	50.00
816	Employer Rights	25.00
817	State Senate	200.00
833	Task Force	240.00
844	Cornally Comm	25.00
870	Rep	18,186.00
871	US Defence Comm	130.00
884	Voice of the People	100.00
885	Vol Pol Fund	580.00
893	Wilderness Society	50.00
898	Wilson for Utah	50.00
907	World Affair Council	120.00
913	Rep Comm, National	2,806.00

TOTAL CONTRIBUTIONS: \$63,106.00

Information By:
Rep. Terry Martin
8/84

MEMORANDUM

State of Alaska

TO: Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit

DATE: February 5, 1985

FILE NO. 366-320-85

TELEPHONE NO. 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Requirements for
organizations
under the political
contribution credit
program

By: Diane T. Colvin *DTC*
Assistant Attorney General
Commercial-Juneau

In conjunction with an audit of the political contribution credit program administered by the Department of Revenue, you have asked whether national political parties and national special interest groups qualify under AS 43.20.013(a), which provides for payments to individuals for contributions made to certain political candidates and organizations. We conclude that a national organization may qualify if the purpose for which it is organized meets the criteria set forth in AS 43.20.013(a).

AS 43.20.013(a) provides as follows:

- (a) A resident individual is entitled to a tax credit not to exceed \$100 for
- (1) a contribution made in a calendar year to a person or organization for use exclusively
 - (A) for a political campaign for a candidate for
 - (i) President or Vice President of the United States, whether or not the candidate will be voted on in a primary election in Alaska;
 - (ii) United States senator from Alaska;
 - (iii) United States representative from Alaska;
 - (iv) governor or lieutenant governor of Alaska;
 - (v) the Alaska legislature;
 - (vi) delegate to an Alaska constitutional convention;
 - (vii) electoral confirmation as a judge or justice of a court in Alaska; or
 - (viii) municipal office in Alaska; or
 - (B) by a group seeking to influence the outcome of a ballot proposition or question in Alaska; and
 - (2) dues paid in a calendar year to a non-profit organization organized primarily for the purpose of influencing elections in Alaska.

Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
366-320-85

February 5, 1985
Page 2

AS 43.20.013(a) places no geographical limitations on an organization. It does, however, impose requirements regarding the purpose of the organization. Thus, a national organization such as "Mondale for President" would qualify because it is organized for the purpose set forth in AS 43.20.013(a)(1)(A)(i) -- it is a political campaign organization supporting a candidate for the Presidency. On the other hand, a contribution to the Republican National Committee would not qualify, because it is not organized exclusively for one of the purposes listed in AS 43.20.013(a)(1)(A)(i) - (viii). It may support the Republican nominee for President, but it also supports other candidates, such as Republican congressional candidates in other states, who are not covered by the statute.

Likewise, national special interest organizations do not qualify unless they are organized for the purposes set forth in AS 43.20.013(a). Thus, a nationwide organization could qualify if it were organized primarily to influence an Alaskan election. AS 43.20.013(a)(2). A state organization would not qualify unless, like the Alaska Environmental Action Committee, it were organized primarily for the purpose of influencing elections in the state. The organizations you list in your memorandum (National Rifle Association, Audubon Society, National Wildlife Federation, Second Amendment Foundation) would not qualify because they are not organized primarily for the purpose of influencing elections in Alaska nor for any of the other purposes listed in AS 43.20.013(a)(1) and (2).

Focusing on the purpose of the organization fulfills, we believe, the legislative intent of the statute. AS 43.20.013(a), like sec. 41 of the Internal Revenue Code (providing for a tax credit for political contributions), was enacted not only for the obvious purpose of encouraging citizens to make contributions to candidates for public office, but also to "compensate" for the fact that contributions to political organizations are not tax deductible as charitable contributions for income tax purposes. See I.R.C. §§ 501, 527 (West 1984). Thus, a contribution must be made to a legitimate political organization in order to qualify as a credit. A charitable organization that incidentally supports a candidate or proposition does not come under the purview of the statute.

Determining whether or not a contribution is made for one of the purposes covered by the statute creates a difficult administrative problem for the Department of Revenue. The purpose of an organization is not always apparent from its name. In addition, it is difficult for the department to identify all the organizations in the state that may be organized for the

Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
366-320-85

February 5, 1935
Page 3

purposes listed in AS 43.20.013(a). This task, in order to be done accurately and efficiently, will probably require additional personnel, and assistance from the Division of Elections and the Alaska Public Offices Commission (APOC).

The other problem created for the department is a public relations one. An organization, in order to encourage contributions, may "advertise" to the public that it qualifies under AS 43.20.013(a) when in fact it does not. Based on a representation of this kind, the contributor will apply to the department for a refund, which may be denied because the contribution was not earmarked exclusively for one of the purposes listed in AS 43.20.013(a). Persons denied a refund are more likely to voice their dissatisfaction with department personnel than with employees of the organization who made the erroneous representation.

One way of easing the administrative burden on the department may be to amend the current regulation, 15 AAC 20.042, which requires, in effect, that a group supporting or opposing a ballot proposition must be registered with the Alaska Public Offices Commission in order to qualify. This registration requirement could be extended to cover most candidates and groups, except those that are not otherwise required to register with APOC, such as groups supporting candidates for national offices. For those organizations that are required to register, the use of registration as a qualifier would probably help to expedite the processing of applications for refunds.

We hope this provides sufficient information for concluding your audit. If you wish further information, please contact us.

NCG:DTC:cct

cc: Ervin Jones, Director
Administrative Services Division
Department of Revenue

Theda S. Pittman, Director
Public Offices Commission
Department of Administration

Sandi Stout, Director
Division of Elections
Office of the Lieutenant Governor

Department of Revenue
HB 144
Amendments Proposed

Replace the bill's substitution language at line 15-17 with the following:
This list, once prepared and furnished to the Alaska Public Offices
Commission, shall become public information under AS 09.25.110 - 09.25.120.

MEMORANDUM

State of Alaska

TO: Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit

DATE: February 5, 1985

FILE NO: 366-320-85

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
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By: Diane T. Colvin *DTC*
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 - (v) the Alaska legislature;
 - (vi) delegate to an Alaska constitutional convention;
 - (vii) electoral confirmation as a judge or justice of a court in Alaska; or
 - (viii) municipal office in Alaska; or
 - (B) by a group seeking to influence the outcome of a ballot proposition or question in Alaska; and
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Page 2

AS 43.20.013(a) places no geographical limitations on an organization. It does, however, impose requirements regarding the purpose of the organization. Thus, a national organization such as "Mondale for President" would qualify because it is organized for the purpose set forth in AS 43.20.013(a)(1)(A)(i) -- it is a political campaign organization supporting a candidate for the Presidency. On the other hand, a contribution to the Republican National Committee would not qualify, because it is not organized exclusively for one of the purposes listed in AS 43.20.013(a)(1)(A)(i) - (viii). It may support the Republican nominee for President, but it also supports other candidates, such as Republican congressional candidates in other states, who are not covered by the statute.

Likewise, national special interest organizations do not qualify unless they are organized for the purposes set forth in AS 43.20.013(a). Thus, a nationwide organization could qualify if it were organized primarily to influence an Alaskan election. AS 43.20.013(a)(2). A state organization would not qualify unless, like the Alaska Environmental Action Committee, it were organized primarily for the purpose of influencing elections in the state. The organizations you list in your memorandum (National Rifle Association, Audubon Society, National Wildlife Federation, Second Amendment Foundation) would not qualify because they are not organized primarily for the purpose of influencing elections in Alaska nor for any of the other purposes listed in AS 43.20.013(a)(1) and (2).

Focusing on the purpose of the organization fulfills, we believe, the legislative intent of the statute. AS 43.20.013(a), like sec. 41 of the Internal Revenue Code (providing for a tax credit for political contributions), was enacted not only for the obvious purpose of encouraging citizens to make contributions to candidates for public office, but also to "compensate" for the fact that contributions to political organizations are not tax deductible as charitable contributions for income tax purposes. See I.R.C. §§ 501, 527 (West 1984). Thus, a contribution must be made to a legitimate political organization in order to qualify as a credit. A charitable organization that incidentally supports a candidate or proposition does not come under the purview of the statute.

Determining whether or not a contribution is made for one of the purposes covered by the statute creates a difficult administrative problem for the Department of Revenue. The purpose of an organization is not always apparent from its name. In addition, it is difficult for the department to identify all the organizations in the state that may be organized for the

Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
366-320-85

February 5, 1985
Page 3

purposes listed in AS 43.20.013(a). This task, in order to be done accurately and efficiently, will probably require additional personnel, and assistance from the Division of Elections and the Alaska Public Offices Commission (APOC).

The other problem created for the department is a public relations one. An organization, in order to encourage contributions, may "advertise" to the public that it qualifies under AS 43.20.013(a) when in fact it does not. Based on a representation of this kind, the contributor will apply to the department for a refund, which may be denied because the contribution was not earmarked exclusively for one of the purposes listed in AS 43.20.013(a). Persons denied a refund are more likely to voice their dissatisfaction with department personnel than with employees of the organization who made the erroneous representation.

One way of easing the administrative burden on the department may be to amend the current regulation, 15 AAC 20.042, which requires, in effect, that a group supporting or opposing a ballot proposition must be registered with the Alaska Public Offices Commission in order to qualify. This registration requirement could be extended to cover most candidates and groups, except those that are not otherwise required to register with APOC, such as groups supporting candidates for national offices. For those organizations that are required to register, the use of registration as a qualifier would probably help to expedite the processing of applications for refunds.

We hope this provides sufficient information for concluding your audit. If you wish further information, please contact us.

NCG:DTC:cct

cc: Ervin Jones, Director
Administrative Services Division
Department of Revenue

Theda S. Pittman, Director
Public Offices Commission
Department of Administration

Sandi Stout, Director
Division of Elections
Office of the Lieutenant Governor

STATE OF ALASKA
THE LEGISLATURE

FOURTH FLOOR - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

August 9, 1984

SUBJECT: Appropriation for payment of tax credits
(HCS CSSB 409 (Fin) am H (Reengrossed))

TO: Representative Terry Martin

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

You have asked me to review an Attorney General's Opinion dealing with the amendment during last session of an appropriation originally enacted in 1980 for payment of tax credits under AS 43.20.013. (Attorney General's Opinion, 366-031-85, August 1, 1984) A brief explanation of the situation follows.

The original appropriation contained in Section 1, ch. 3, SSSLA 1980 was to be used for refunds for income taxes paid after December 31, 1978 for a tax year occurring after that date and "... for 1979 and 1980 tax credits payable under AS 43.20.013." While the appropriation did not contain a lapse clause, arguably this could have been treated as a one-year appropriation which would have lapsed at the end of the fiscal year on July 1, 1981. Instead the Department of Revenue adopted a regulation that first became effective on October 9, 1980 permitting individuals to claim a credit under AS 43.20.013 within three years after the year in which the contribution is made. (15 AAC 20.042) Apparently, on the strength of this regulation the Department of Revenue placed the appropriation in a non-lapsing account. Even though the last day on which a claim could have been filed under the original appropriation and the regulation was December 31, 1983 the balance of the appropriation was not moved into the general fund but was kept in the non-lapsing account.

The legislature addressed this situation by enacting two conflicting sections in HCS CSSB 409 (Fin) am H (Reengrossed). Section 140 provides:

Sec. 140. Section 1, ch. 3, SSLA 1980 (sic) is amended to read:

Section 1. The sum of \$112,042,000 is appropriated from the general fund to the Department of Revenue

(1) for refunds to individuals and fiduciaries for income taxes paid after December 31, 1978 for all or part of a tax year occurring after December 31, 1978; and

(2) for childcare [1979 AND 1980] tax credits payable under AS 43.20.013.

Section 228 provides:

Section 228. Section 1, ch. 3, SSSLA 1980, is amended to read:

Section 1. The sum of \$106,291,900 [112,042,000] (sic) is appropriated from the general fund to the Department of Revenue

(1) for refunds to individuals and fiduciaries for income taxes paid after December 31, 1978 for all or part of a tax year occurring after December 31, 1978; and

(2) for 1979 and 1980 tax credits payable under AS 43.20.013.

The intended result of Section 228 was to lapse the balance of the original appropriation retained in the non-lapsing account into the general fund. The Governor, however, vetoed this section on July 14, 1984 leaving Section 140 intact, and signed the bill into law on the same day.

It is fundamental that only the legislature has the power to appropriate state funds. (Article IX, Section 13, Constitution of the State of Alaska) Section 140 has the effect of extending the original appropriation. The Attorney General recognizes the power of the legislature to do so in the opinion. "We believe the extension of a lapse date is without question within the legislature's power to appropriate." (Attorney General's Opinion, 366-031-85, August 1, 1984, page 2) However, the Attorney General asserts that the attempt to restrict the object of the expenditure to

childcare tax credits payable under AS 43.20.013(b), rather than allowing the money to continue to be used for all tax credits payable under that section, amounts to an attempt to retroactively amend or repeal AS 43.20.013(a).

The retroactivity argument seems to be based on an assertion that the legislature by amending the original appropriation is somehow attempting to defeat claims for political campaign contributions made during 1979 and 1980. However, under the Department of Revenue's own regulation, claims for contributions made during 1979 were barred after December 31, 1982 and claims for contributions made during 1980 were barred after December 31, 1983. The amendment to the original appropriation did not take effect until July 15, 1984, so it is difficult to understand how this can be viewed as an attempt on the part of the legislature to retroactively cut off those claims. It could have had no effect on those claims.

The Attorney General also asserts that the amendment to the original appropriation indirectly repeals AS 43.20.013(a) or repeals that subsection by implication. It seems to me that a court is more likely to find that the amendment has no effect on any part of AS 43.20.013. There exists a long-established judicial policy disfavoring the implied repeal of statutes. (United States v. Borden, 308 US 188 (1939); Cook v. United States, 288 US 102 (1933); Watt v. Alaska, 451 US 259 (1981)) The cases that consider implied repeals deal with situations in which one piece of substantive legislation appears to conflict with another, and in such situations the court will attempt to construe both statutes so that each is preserved. It goes even further to argue that a court would find that an appropriation might have the effect of impliedly repealing a substantive statute. I believe that a court would find, if faced with the question, that the amendment to the original appropriation merely has the effect of providing funding for claims payable under AS 43.20.013(b), but not for claims payable under AS 43.20.013(a).

One reason the Attorney General offers for objecting to the use of an amendment to an existing appropriation to impliedly repeal AS 43.20.013(a), is that such a repeal should be offered as substantive legislation subject to veto by the Governor. This is undoubtedly correct if the legislature were, in fact, attempting to repeal AS 43.20.013(a). However, the Attorney General in this opinion ignores the

fact that the Governor was free to veto Section 140 if he did not like the method used by the legislature in amending the original appropriation. In fact, the Governor vetoed Section 228 which would have simply provided for the lapse of money that could not be used under the terms of the original appropriation.

As far as I can tell, the Attorney General in this opinion is essentially objecting to the fact that the legislature in amending the original appropriation provided funding for tax credits payable under AS 43.20.013(b) but did not provide funding for credits payable under AS 43.20.013(a). Since there is apparently no other source of funds for payment of those credits, the opinion expresses the concern that individuals entitled to those credits may have a cause of action against the state on the theory that the tax credit program contained in substantive law vests the intended recipients with a right to the money. It appears to me unlikely that a court would find that the enactment of a grant program entitles the intended recipient to payment under the program in the absence of an appropriation to fund the program. In fact, AS 43.20.013(c) specifically conditions payment of the credit on an appropriation for the purpose. That subsection states in part:

A credit under this section shall be paid in the manner provided in AS 43.20.030(e) for the payment of refunds and payment may not be made without an appropriation for that purpose.

In any case, it might be more appropriate for the individuals impacted by the lack of funding for AS 43.20.013(a) to bring an action against the state to determine any question that may exist as to whether the statute confers an absolute or vested right, rather than for the executive branch of government to ". . . ignore the purported amendment which limits the purposes for which the appropriation may be spent" as the Attorney General advises. (Attorney General's Opinion, 366-031-85, August 1, 1984, page 5).

As the Attorney General notes, the precise issues dealt with in the opinion have not been addressed by the Alaska Supreme Court, so it cannot be said with certainty how the court would respond if faced with a challenge by the legislature to the action that the Attorney General advises the Department of Revenue to take. It appears to me that the

Representative Terry Martin
August 9, 1984
Page 5

legislature would however, have a reasonable basis for
challenging that action.

TBC:ojb
J8/071

MEMORANDUM

State of Alaska

TO: Hon. Mary Nordale, Commissioner
Department of Revenue

DATE: August 1, 1984

FILE NO: 366-031-85

TELEPHONE NO: 465-3600

FROM: Norman C. Gersuch
Attorney General

SUBJECT: Enactment of appropriation to finance political campaign contribution credits

By: James L. Baldwin
Assistant Attorney General
Governmental Affairs-Juneau

You have requested our opinion concerning the availability of the appropriation made in chapter 3, SSLA 1980 to pay claims for political contribution credits under AS 43.20.013. That section provides for the refund of money contributed by individuals for use "exclusively for a political campaign for a candidate ... or by a group seeking to influence the outcome of a ballot proposition or question" AS 43.20.013(a). In addition, the section provides for the refund of 16 percent of the federal tax credit claimed by the individual for household and dependent care services necessary for gainful employment. AS 43.20.013(b). Apparently, the legislature attempted to prevent the payment of political campaign contributions by amending an earlier appropriation made to finance both political campaign and childcare credits. This action was taken in section 140 of HCS CSSB 409(Fin) am H (Reeng). Section 140 provides:

Sec. 140. Section 1, ch. 3, SSLA 1980 is amended to read:

Section 1. The sum of \$112,042,000 is appropriated from the general fund to the Department of Revenue

(1) for refunds to individuals and fiduciaries for income taxes paid after December 31, 1978 for all or part of a tax year occurring after December 31, 1978 and

(2) for childcare [1979 AND 1980] tax credits payable under AS 43.20.013.

In section 140, the legislature attempted to accomplish two things. First, it makes the unobligated balance of the \$112,042,000 appropriation available for at least an additional claim year by removing the reference to the 1979 and 1980 claim

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL STEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3110

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

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

February 22, 1985

MAR 26 1985

Mr. David A. Lampen
Clerk of the Superior Court
State of Alaska
303 "K" Street
Anchorage, AK 99501-2084

Re: Application for Release of
Individual Tax Credit Lis

Dear Mr. Lampen:

Enclosed is the state's response to Representative Terry Martin's application to the court seeking release of information made confidential by AS 43.05.085. The state does not oppose Representative Martin's request, for the reasons given in the attached statement.

Thank you for your assistance. If you have questions, please contact us.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Diane T. Colvin
Assistant Attorney General

DTC/mf

Enclosure

cc: Honorable Terry Martin
Alaska State Legislature

Sally Smith, Director
Public Services Division
Department of Revenue

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IN THE SUPREME COURT FOR THE STATE OF ALASKA

In Re Application For Release)
of Individual Tax Credit Lists)

)
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)

STATE'S STATEMENT OF NON-OPPOSITION TO
APPLICATION FOR RELEASE OF INDIVIDUAL TAX CREDIT LISTS

Pursuant to Appellate Rule 404(c), the state files this response to the application filed by Representative Terry Martin for release of individual tax credit lists. The state does not oppose Representative Martin's request for release of these lists, for the reasons given below.

First, Representative Martin is requesting only the names of candidates and groups for whom the tax credit provided by AS 43.20.013 is claimed. Release of this information would not jeopardize any individual contributor's claim to privacy.

Second, Representative Martin is a state legislator. The political contribution program involves the expenditure of public funds. Representative Martin, as a public official, has a legitimate reason for seeking the information requested. His interest would, we believe, outweigh any interest the candidates and groups may have in nondisclosure.

Finally, AS 43.05.085 requires that the information requested by Representative Martin be provided to the Alaska Public Offices Commission (APOC). Other information of this kind in the possession of APOC is public information. There is not a legitimate privacy reason, in our view, for treating this particular information differently. More importantly, the purpose of AS 15.13, under which campaign expenditures and contributions must be reported to APOC, is to enable the electorate of the state to be better informed about funds contributed to and expenditures made by candidates for public office. This public purpose is not served if certain information held by APOC is kept confidential.

/ / / / /

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
POUCH K JUNEAU, ALASKA 99811
PHONE 465-3600

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The state, therefore, does not oppose the application for release of the names of candidates and groups for whom credits were claimed under AS 43.20.013.

DATED: 2 - 22 - 85

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Diane T. Colvin
Diane T. Colvin
Assistant Attorney General

The undersigned hereby certifies that on the 22nd day of February, 1985, the attached documents were mailed to the ~~attorneys of record~~ representatives ~~attorneys~~

Margaret H. ...

Subscribed and sworn to before me the date last written.

Christine C. ...

Notary Public
My Commission Expires 10/1/88

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
POUCH K, JUNEAU, ALASKA 99811
PHONE 465-3600

In the Matter of the)
Application for Release)
of Individual Tax Credit)
Lists.)
_____)

Supreme Court No. S-839

Filed and Entered *W.H.C.*
APPELLATE COURTS of the
STATE of ALASKA

MAR 27 1985

O R D E R

Before: Rabinowitz, Chief Justice, Burke,
Matthews, Compton and Moore, Justices.

CLERK

By *[Signature]* Depu

On consideration of the application for the release, pursuant to AS 43.05.085, of individual tax credit lists, filed by Representative Terry Martin on February 5, 1985, and the statement of non-opposition to the application, filed by the State of Alaska on February 25, 1985,

IT IS ORDERED:

The application is granted. The State of Alaska is directed to release to Representative Martin a list of all candidates or groups to which contributions were made and for which the tax credit provided for by AS 43.20.013 was claimed during calendar years 1983 and 1984.

Entered by direction of the court at Anchorage, Alaska on March 21, 1985.

CLERK OF THE SUPREME COURT

David A. Lampen

DAVID A. LAMPEW

ccs: Justices
Counsel
Representative Terry Martin
Sally Smith, Director of Public Services,
Department of Revenue

*fm
ac
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STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date _____

REQUEST

Bill/Resolution No: HB 144
 Title: An act relating to political campaign contributions
 Sponsor: Martin and Marrou
 Requestor: House State Affairs
 Date of Request: 2/1/85

FISCAL DETAIL

Agency Affected: Revenue
 Program Category Affected: General Government
 BRU, Program of Subprogram(s) Affected: Administration and Support - Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: See attached.

Prepared By: Ervin B. Jones, Director
 Division: Administrative Services
 Approved by Commissioner: Shirley G. Sturdee
 Agency: Revenue

Phone: 465-2213
 Date: 2/15/85
 Date: 2/20/85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Department of Revenue
HB 144 Analysis

Assumptions:

- 1) The inserted information on line 15-17 refers to the Refundable Credit Claims received by the Department.
- 2) Public disclosure under AS 4~~7~~³.0~~8~~⁵.085, as amended, would be limited to the list as prepared for the Alaska Public Offices Commission, and would not extend to custom-programmed computer runs by election district, party affiliation, etc. If the Department of Revenue is required by this change to compete with commercial data processing service bureaus, there will be fiscal impact.

Program Summary:

1. Positions: None.
2. Other expenditures: None.
3. Funding: None required.
4. Section cost analysis: N/A.

Computations: N/A.

Economic Impact: N/A.

Impact on local government: N/A.

Attachments: See attached recommended amendment.

Department of Revenue
HB 144
Amendments Proposed

Replace the bill's substitution language at line 15-17 with the following:
This list, once prepared and furnished to the Alaska Public Offices
Commission, shall become public information under AS 09.25.110 - 09.25.120.

A SPECIAL REPORT ON THE
DEPARTMENT OF REVENUE
POLITICAL CONTRIBUTION CREDIT PROGRAM
Claim Years 1981-1983

February 15, 1985

Audit Control Number

04-4210-85-S

Commissioner, Department of Revenue

Mary A. Nordale

Deputy Commissioners, Department
of Revenue

Taxation
Treasury

Bruce M. Botelho
Milt B. Barker

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

February 25, 1985

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska
Statutes, the attached report is submitted for your review.

A REPORT ON THE
DEPARTMENT OF REVENUE
POLITICAL CONTRIBUTION CREDIT PROGRAM
Claim Years 1981-1983

February 15, 1985

Audit Control Number

04-4210-85-S



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

TABLE OF CONTENTS

	<u>Page</u>
Purpose of the Report.	1
Organization and Function.	3
Funding History of Political Contribution Credit Program	5
Findings and Recommendations	9
Auditor's Comments	13
Appendixes:	
A - Attorney General Memorandum to Joseph K. Donohue, Deputy Commissioner, Department of Revenue, July 15, 1982.	15
B - Attorney General Memorandum to Mary A. Nordale, Commissioner, Department of Revenue, August 1, 1984	21
C - Legislative Counsel Memorandum to Representative Terry Martin, August 9, 1984.	27
D - Attorney General Memorandum to Gerald L. Wilkerson, Legislative Auditor, February 5, 1985.	33
E - Chart of: Political Contribution Credit Payments by Recipient Type, Projected for Claim Years 1981 - 1983	37
F - Chart of: Political Contribution Credit Payments by Elective Office, Projected for Claim Years 1981 - 1983	39
G - Chart of: Political Contribution Credit Payments by Political Party, Projected for Claim Years 1981 - 1983	41
Agency Response:	
Department of Revenue.	43

PURPOSE OF THE REPORT

In accordance with a Legislative Budget and Audit Committee special request and Title 24 of the Alaska Statutes, this report was prepared:

1. To determine the source of funds used to pay political contribution credits established and allowed under AS 43.20.013(a) since July 1980.
2. To review paid political contribution credit claims to determine if expenditures have been made in accordance with statute.

(Intentionally left blank)

ORGANIZATION AND FUNCTION

The political contribution credit program is administered by the Department of Revenue (DOR), Division of Administrative Services. The credits were continued after the Alaska State income tax was repealed by the 1980 Special Legislative Session. Rather than allowing political contributions to be taken as a credit against State income taxes, DOR pays residents up to \$100 per tax year for contributions made to eligible political candidates and organizations.

To receive reimbursement for contributions a resident must file a claim with DOR and supply supporting documentation of the contribution. DOR also reimburses residents for child care expenses in conjunction with the child care credits available on Federal income taxes. For further explanation of how the two tax credits are computed and how the State and Federal credits compare, see the Auditor's Comments section of this report.

(Intentionally left blank)

FUNDING HISTORY OF THE POLITICAL CONTRIBUTION CREDIT PROGRAM

On two occasions since the Alaska income tax was abolished, legislators have attempted to abolish the political contribution credit (PCC) program by not appropriating funds for claim payments. Both times the program was continued on the advice of the Department of Law because of defects in the way in which legislation was drafted. Following is a summary of the funding history of the program and the impact that various Attorney General interpretations have had on the administration of the program.

The Original Appropriation

When the 1980 Special Legislative Session repealed the State of Alaska income tax they appropriated \$112,042,000 to refund individuals and fiduciaries for taxes which had been paid after December 31, 1978, and for the payment of 1979 and 1980 tax credits payable by the State (Chapter 3, SSSLA 1980). Of this \$112,042,000 appropriation, \$1,542,000 was allocated to pay both anticipated PCC and child care credits (CCC) to be claimed by residents for 1979 and 1980. The following legislative session in turn appropriated \$1,632,000 from the General Fund to pay 1981 PCC and CCC claimed during FY 82.

FY 83 Appropriation - Legislature Attempts to Defund Program

In 1982, the Legislature made its first attempt to discontinue the PCC program. In its FY 83 budget request, DOR asked for a total of \$2,791,000 to fund both the PCC and CCC programs. The budget request indicated that the total was calculated from allocating \$1,758,000 for PCC claims and \$1,033,000 for CCC claims. The Legislature approved the requested \$1,033,000, designating the appropriation for "refundable credits." In the 1982 Free Conference Committee (FCC) minutes for the FY 83 budget, both the House and Senate Analysis note that the request for the PCC program was deleted from the final budget appropriation act.

DOR sought advice from the Department of Law regarding how they should respond to the apparent defunding of the PCC program. The Attorney General advised DOR that they should continue the program using the \$1,033,000 appropriation to fund both PCC and CCC claims. The Attorney General based the advice on his analysis of the budgetary language in the appropriation, and his view that the legislative intent regarding the program's future was unclear. The Attorney General felt that analysis statements in the FCC minutes did not conclusively state intent, and if the Legislature did not want to fund the PCC program it would have included, and should have used, a statement of legislative intent in the

body of the appropriation act itself (see Appendix A for full text of the July 15, 1982, memorandum).

In a February 8, 1983, letter to Representative Ward the Attorney General further explained the reasoning of his advice to DOR. In the letter, the Attorney General stated that his "... conclusion was also compelled by the fact that [the PCC law is] a mandatory law, one which requires the Department of Revenue to perform a certain duty." This certain duty is brought on by use of such phrases in the PCC statute as: "A resident individual is entitled to a tax credit..." and "A credit...shall be paid in the manner provided...." The Attorney General advised that due to such language, the Legislature is required to be more specific by either repealing the PCC portion of the tax credit statutes, or by making the appropriation itself more specific by expressly limiting its wording.

Supplemental Appropriation and FY 84 Funding

Due to the "shortfunding" of the credit programs by the 1982 Legislature, DOR sought and received a \$3,000,000 supplemental appropriation from the 1983 Legislature to further fund 1982 PCC claims. After receiving the supplemental appropriation, DOR used the remaining balance of the original 1982 refundable credit appropriation of \$1,033,000 to pay CCC claims. In addition to the supplemental appropriation, the 1983 Legislature appropriated \$500,000 for 1983 claims, to be paid during FY 84.

FY 85 Funding - Legislature Attempts Abolishment Again

When considering its FY 85 budget request for PCC and CCC claim funds, DOR decided rather than requesting new general fund appropriations, they would request legislative approval to "roll over" funds previously appropriated for claims. That is, they requested that the Legislature extend the lapse date of the original \$112,042,000 appropriation, in order that the balance could be used to fund 1984 PCC and CCC claims in FY 85. The Legislature responded to DOR's request by amending the language of the original appropriation.

In section 140, Chapter 171, SLA 1984 the Legislature deleted the original appropriation's reference to 1979 and 1980 payable tax credits and substituted a reference to child care tax credits. The Legislature attempted to accomplish two things with this amendment. First, they wanted to make the unobligated balance available for at least another claim year, and secondly, they wanted to restrict its use to payment of only CCC claims. By confining the appropriation's reference to child care credits only, the Legislature implicitly defunded the PCC program.

Once again, DOR sought advice from the Department of Law regarding the legal status of the program and the obligation of the State to continue paying PCC claims. The Attorney General advised DOR to continue paying both PCC and CCC claims with the balance of the extended appropriation. The Attorney General primarily based his reasoning on a separation of powers issue, stating in his memorandum to DOR's commissioner that:

We believe the extension of a lapse date is without question within the Legislature's power to appropriate. However, the attempt to radically restrict the objects of expenditure under an existing appropriation is an abuse of the Legislature's power because it constitutes an attempt to retroactively amend or repeal the [program's statutes].

The Attorney General concluded by arguing that the Legislature cannot indirectly repeal the PCC program's statutes. He states that "the constitution requires the Legislature to place such a measure before the Governor in a separate bill," and advises DOR to "...ignore the purported amendment which limits the purposes for which the appropriation may be spent." (See Appendix B for full text of the August 1, 1984, memorandum.)

The following table summarizes the history of the funding for the PCC program since the repeal of the State income tax:

<u>Claim Year</u>	<u>Amount Appropriated</u>	<u>Legislative Citation of Appropriation</u>
79 - 80	\$1,542,000 (1)	Chapter 3, SSSLA 1980
81	1,632,000 (2)	Chapter 82, SLA 1981
82	1,033,000 (3)	Chapter 101, SLA 1982
82	3,000,000	Chapter 34, SLA 1983
83	500,000	Chapter 107, SLA 1983
84	5,750,100 (4)	Chapter 171, SLA 1984

- (1) Amount represents allocated portion of \$112,042,000 appropriation made to repay withheld income taxes and payable tax credits when the State Income Tax was repealed. Allocation includes funds for paying child care credit claims.

- (2) Appropriation made for total refundable credit program, includes funding for both political contribution and child care credit claims.
- (3) According to House and Senate analysis included in 1982 Free Conference Committee minutes, this appropriation represents funding for child care credit claims only, but DOR also used it for political contribution credits upon advice from the Department of Law.
- (4) Represents the remaining balance of the \$112,042,000 appropriation made in Chapter 3, SSSLA 1980 to fund both withheld income taxes and refundable credits. [See Footnote (1)].

The table below summarizes expenditures made each fiscal year for political contribution credits by claim year:

Claim Year	Expenditures					Total
	FY 81	FY 82	FY 83	FY 84	FY 85*	
79 - 80	\$ 826,800	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$826,800
81	-0-	545,900	348,400	13,800	3,400	911,500
82	-0-	-0-	577,600	435,100	34,000	1,046,700
83	-0-	-0-	-0-	456,600	114,500	571,000

* Claims processed through November 30, 1984.

Source: Department of Revenue reports and subsidiary payment system. Expenditure totals are presented as reported and are unaudited.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Department of Revenue (DOR) should develop and implement better review procedures for political contribution credit claims to prevent payment of credits for contributions made to ineligible recipients.

The governing statute [AS 43.20.013(a)] for the State's political contribution credit program entitles Alaskan residents to a tax credit reimbursement up to \$100 annually for political contributions. These political contributions can be made to individuals or organizations falling into three broad categories:

1. Candidates - Contributions can be made to candidates for: President or Vice President of the United States, U.S. Congressional Seats from Alaska, Governor or Lieutenant Governor of Alaska, the State Legislature, delegate to an Alaska constitutional convention, a municipal office, and/or a judge seeking retention.
2. Ballot proposition groups - Contributions can be made to groups seeking to influence the outcome of a ballot proposition or question in Alaska. DOR regulations [15 AAC 20.042(e)] further provide that "a contribution to a group seeking to influence the outcome of a ballot proposition or question in Alaska is allowable...only if the contribution is required to be reported to the Alaska Public Offices Commission (APOC) by that group."
3. Political action committee or group - Alaskans are also entitled to credit payments for "dues paid in a calendar year to a non-profit organization, organized primarily for the purpose of influencing elections in Alaska" (emphasis added).

We reviewed over 400 randomly selected political contribution credit claims filed with DOR in the past three years. Of those claims reviewed we found 64, or 16 percent, of the claim forms listed contributions made to one or more recipients that did not meet the statutory eligibility requirements. After calculating the dollar effect of payments made for these contributions, we project that for the three years reviewed, DOR has made payments of between \$170,400 and \$374,400 for contributions made to ineligible recipients.

The primary reason for this material error rate was the unclear status of contributions made to national political parties for what appears to be for use outside of Alaska for purposes other than supporting candidates eligible under the program's statutes. DOR has allowed and paid claims for

contributions made to the Republican National Committee, the Democratic Party and many of their affiliated organizations.

We asked the Department of Law if such contributions met any of the eligibility criteria set out in the program's governing statute (AS 43.20.013). The Attorney General responded that contributions made to organizations "...not exclusively organized for one of the purposes listed in AS 43.20.013(a)(1)(A)(i) through (viii)" would not qualify for credit payment. (See Appendix D for the full text of the February 5, 1985, memorandum.) We excluded contributions made to the Libertarian party from our projection of ineligible payments because upon closer examination of those particular claims we found most of these contributions were made to either the Alaskan Libertarian Party or otherwise appeared to be used exclusively in Alaska to support candidates or positions on various ballot propositions. Accordingly, contributions made to State and local Democratic and Republican party organizations and committees were also excluded from our ineligible payment projections.

Credit payments made for contributions to national special interest groups also contributed to our projected total of ineligible payments. In our test we found that DOR reimbursed claimants for contributions made to the National Rifle Association, the Audubon Society, the National Wildlife Federation, and the 2nd Amendment Foundation. These types of contributions violate not only the program's statutory criteria but also the regulatory requirement that the recipient organization must file with and report to APOC.

Currently, DOR is making only a cursory review of political contribution credit claims. We feel that the amount of credit payments for contributions to ineligible recipients is significant enough to warrant more scrutiny of the claims. A notice in a prominent location on the claim form that contributions to national political parties and organizations are not eligible for reimbursement should serve fair notice to affected claimants and serve to reduce most of the ineligible claim problems.

Because of the amount and number of payments involved, DOR should determine if it would be cost-effective to recover tax credits paid for ineligible contributions, and proceed accordingly.

Recommendation No. 2

DOR should improve its data processing, edit functions to eliminate duplicate payments for political contribution credits.

We identified 125 instances during the period of our review where DOR made two payments that were both charged to the same credit claim year, and paid to the same claimant social security number. A little less than two-thirds of these apparent duplicates had reasonable explanations, such as spouses using the same social security number, the subsequent cancellation of one of the warrants, or one individual filing two different claims for different contributions while remaining under the \$100 annual limit. However, we identified 45 instances where credit payments were made twice to the same claimant for either the same claim or for different claims in excess of the annual \$100 limit. These duplicate and/or overpayment warrants totaled just over \$4,000.

Although small, given the \$2,427,840 in payments on the DOR files for the 1981-1983 period, the existence of these duplicates suggest a significant weakness in the edit and review process of PCC claim forms. We recommend that DOR consider developing an edit routine in their claim processing cycle that would "flag" multiple payments made to the same claimant social security number and provide a listing for manual follow-up and review.

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AUDITOR'S COMMENTS

When the Legislature repealed the State income tax in 1980, they retained two State tax credits - the political contribution credit (PCC) and child care credit (CCC) programs. These State income tax credits were modeled after tax credits available to Federal taxpayers.

The Internal Revenue Service (IRS) allows Federal income taxpayers a tax credit equal to 50 percent of total political contributions up to an annual maximum of \$50 (\$100 on joint returns). As a result, political contributors in Alaska can actually realize a profit on their contributions. For example, for a contribution of \$100 they are entirely reimbursed by the State and receive a \$50 credit from the IRS.

The IRS allows Federal taxpayers a nonrefundable credit for a portion of qualifying child or dependent care expenses paid for the purpose of being gainfully employed. The amount of the credit ranges from between 30 percent and 20 percent (depending on the taxpayer's adjusted gross income) of employment-related child care expenses up to a limit of \$2,400 (for one child) or \$4,800 (for two or more children). Under terms of the Alaska CCC program, individuals are entitled to a tax credit equal to 16 percent of the credit claimed on their Federal income tax return. For the 1983 claim year, the average CCC paid by DOR was \$64.69.

Both the PCC and CCC programs are costly and difficult to administer. Administration of the programs involve the processing of many claims for relatively small payment amounts. Costs involved in screening claims for compliance with eligibility criteria quickly can exceed the costs of paying ineligible claims.

Legislative Policy Options

According to DOR records, payments for PCCs for claim years 1981-1983 averaged just over \$790,000 annually, while expenditures for CCCs averaged about \$346,000 annually for the same period. As of January 31, 1985, the balance of the appropriations remaining for payment of both PCC and CCC claims was just over \$5.8 million.

Due to the difficulty and expense of administering the program, and because the Federal government provides Alaskan taxpayers with similar credits, and in light of the current prospects of significant decline in future State revenues, the Legislature may wish to consider abolishing either or both the PCC and CCC programs and lapsing the remaining appropriation for the payment of claims back to the General Fund.

Alternatively, if the Legislature wished to continue the CCC program, while abolishing the PCC program, they could lapse the appropriation's remaining balance and then reappropriate funds on an annual basis for estimated CCC payments.

MEMORANDUM

State of Alaska

to: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

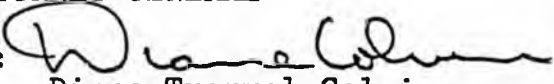
DATE: July 15, 1982

FILE NO: 366-034-83

TELEPHONE NO: 465-3600 ex. 56

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Funding for Tax
Credits under
AS 43.20.013(a)
for FY'83

By: 
Diane Tremmel Colvin
Assistant Attorney General

You ask whether funding is provided by Ch. 101, SLA 1982 for payment of refunds to persons who make contributions to candidates for public office and political organizations as authorized by AS 43.20.013(a). ^{1/} While the legislative intent is not clear, we believe that funding is provided for this purpose and for child care tax credits by Chapter 101. The amount of the appropriation is \$1,033,000. We base this conclusion on an examination of the legislative history of CS for HB 666(Fin) (1982 House budget bill) and SCS for HB 148(Fin) (1982 Senate budget bill).

AS 43.20.013 authorizes tax credits not to exceed specified limits for:

- (1) contributions made to certain candidates for public office and certain political organizations, and
- (2) expenses for child care.

Subsection (c) of AS 43.20.013 provides as follows:

The commissioner of revenue shall pay the amount of a tax credit allowed by this section to a resident individual who makes a return as provided in AS 43.20.012. A credit under this section shall be paid in the manner provided in AS 43.20.030(e) for the payment of refunds and ~~payment may not be made without an appropriation for that purpose.~~

^{1/} You also ask whether this program is underfunded for fiscal year 1983. That is not a legal question and no response is made to that question in this memo.

It is apparent from the language of subsection (c) that payments for political contributions and child care expenses may not be made without an appropriation.

Your question concerning funding of refunds for political contributions arises because Ch. 101, SLA 1982, at p. 26, line 7 appropriates \$1,033,000 for Refundable Credits, with no indication of the specific amount provided for the two types of credits under this budget component, political contributions and child care credit. Thus we must turn to the legislative history of this issue to reach a conclusion. 2/

The budget submitted to the 1982 Legislature by the governor requested \$2,791,000 for the credits authorized by AS 43.20.013. The detailed budget shows that the figure for this component, termed "refundable credits", was calculated as follows:

Political Contributions \$1,758,000.

Child Care Credit \$1,033,000.

When the budget emerged several weeks later in the form of HB 666, the figure allocated for the component of Refundable Credits was \$1,033,000. In hearings before the House Finance Committee on March 31, 1982, a motion was made to accept this figure, with the statement that it would fund child care credits. There was considerable discussion over the elimination of the amount originally proposed by the Governor for political contributions. To answer objections to the change from the Governor's

2/ On its face, the appropriation for refundable credits is clear and unambiguous and it can be argued that it is unnecessary to resort to extrinsic interpretative aids such as legislative history. *Alaska Public Employees v. State*, 525 P.2d 12, 14 (Alaska 1974). This approach is based on the "plain meaning rule", i.e., where the meaning of a statute is apparent, there is no need to resort to methods of statutory construction. *White v. Alaska Ins. Guaranty Ass'n.*, 592 P.2d 367, 369 (Alaska 1979). However, we believe it is appropriate in this case to examine legislative history for assistance in making a judgment on the meaning of the provision in question. The Alaska court has rejected the "plain meaning" rule as a strict exclusionary rule. *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534, 540 (Alaska 1978).

Joseph K. Donohue
Deputy Commissioner

July 15, 1982
Page -3-

request, Representative Meekins proposed that any money left from the current fiscal year be reappropriated to cover refunds for political contributions. The minutes of the House Finance Committee for March 31 show that he made the following motion:

...to extend the lapse date of the FY'82 appropriation so that if there are any funds left they could be used for refunds during the period between January 1 and July 1.

After some discussion, the motion passed, along with the motion to accept the figure of \$1,033,000. Thus the House budget, as it was passed out of the House Finance Committee and taken up on the floor of the House, included funding for child care credit in the amount of \$1,033,000 and funding for political contributions dependent on "left-over" FY'82 funds, if any.

As you know, CS for HB 666 passed in the House, but not in the Senate. 3/ An "alternative" budget (SCS for HB 148(Fin)) was developed by the Senate. It included the same figure, \$1,033,000, in the category of Refundable Credits. This was the figure included in the version passed on the Senate floor, and sent to Conference Committee. 4/

The Conference Committee on CS for HB 148(Fin) requested limited powers of free conference on several items, including Refundable Credits. 5/ The request was granted by both houses, and the issue of refundable credits was discussed in free conference on May 31, 1982. The minutes of the Free Conference Committee for that date read as follows:

----- Representative Cotten noted that current law

3/ 1982 House Journal, p. 1155.

4/ 1982 Senate Journal, p. 1503.

5/ 1982 Senate Journal, p. 1620; 1982 House Journal, p. 2231.

Joseph K. Donohue
Deputy Commissioner

July 15, 1982
Page -4-

allows for refunds for political contributions, and asked if the funding level for this program is adequate to cover refund claims. Representative Adams advised that the law states that refunds may be given; it does not state that reimbursements must be made. Representative Cotten attested to inequities involved in refunds issued on a "first come/first served" basis. Mr. Adams moved for adoption of the House figure of 1,033.0. Representative Cotten objected. Senator Ray moved for adoption of the Senate figure (identical to that of the House). Representative Cotten's objection to the figure was overridden and the "synonymous" House/Senate total adopted.

While not clear, this discussion appears to contemplate continued funding for political contributions, albeit at a reduced and arguably insufficient level. At the least, it does not manifest legislative intent to eliminate funding for credits for political contributions. Without such a showing, we believe it would be difficult to maintain that the amount approved by the Conference Committee in the budget category of Refundable Credits and ultimately accepted by both houses and enacted into law by the Governor eliminated all funding for political contributions and funds child care credits only. 6/

This apparent lack of intent to eliminate political contributions funding is further demonstrated by the format of the budget bill itself. There are numerous appropriations in Ch. 101, SLA 1982 that are accompanied by intent statements. For example, on page 26, lines 12-17, the appropriation for student ADM Support is followed by this statement:

This appropriation does not provide for student ADM Support for BIA schools which may

6/ It should be noted that a bill which would have repealed AS 43.20.013(a), CS for HB 137(Fin), passed in the House but was not acted upon in the Senate. 1982 House Journal, p. 655. Failure of this bill to pass both houses is an additional indication of legislative intent in this area. Had this bill passed in the Senate as well as the House the intent to eliminate the political contributions program would have, of course, been clear.

Joseph K. Donohue
Deputy Commissioner

July 15, 1982
Page -5-

transfer to school districts or new schools or programs which may be established during FY'83. It is the intent of the legislature that the Department of Education fund any such transfers or additions out of this appropriation and present to the legislature a request for a supplemental appropriation to accommodate the costs of any BIA transfers or establishment of new schools or programs, no later than the 15th day of the 1983 legislative session.

We believe that the appropriation for refundable credits would have been accompanied by a statement of this kind had the legislature intended to eliminate all funding for political contributions.

There are, however, indications to the contrary. The analysis of SCSHB 148(Fin) prepared by Legislative Finance shows at p. 48 the reduction from the governor's recommendation of \$2,791,000 in the refundable credits program category to \$1,033,000 in both the Senate and House budgets. This is accompanied by the notation: "Delete political contribution credit (1758.0)". This is of interest, but cannot be taken, we believe, as proof of legislative intent to eliminate all funding for credits for political contributions. It is rather, a staff analysis of the means of arriving at the figure of \$1,033,000 and explaining the variation between the Governor's recommendation and the legislative versions.

Thus we conclude that with no clear showing of legislative intent to the contrary Ch. 101, SLA 1982 appropriates \$1,033,000 for refundable credits, which includes credits for political contributions and credits for child care. Payments for both types of credits may be made by the Department of Revenue up to this amount. As you indicated in your memorandum to us, it may be necessary to prepare a request for a supplemental in 1983 to cover claims that exceed this amount.

We hope this information is of use to you. If you have further questions, please do not hesitate to contact us.

WLC/DTC/pkh

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MEMORANDUM

State of Alaska

TO: Hon. Mary Nordale, Commissioner
Department of Revenue

DATE: August 1, 1984

FILE NO: 366-031-05

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Enactment of appro-
priation to finance
political campaign
contribution credits

By: James L. Baldwin
Assistant Attorney General
Governmental Affairs-Juneau

You have requested our opinion concerning the availability of the appropriation made in chapter 3, SSLA 1980 to pay claims for political contribution credits under AS 43.20.013. That section provides for the refund of money contributed by individuals for use "exclusively for a political campaign for a candidate ... or by a group seeking to influence the outcome of a ballot proposition or question" AS 43.20.013(a). In addition, the section provides for the refund of 16 percent of the federal tax credit claimed by the individual for household and dependent care services necessary for gainful employment. AS 43.20.013(b). Apparently, the legislature attempted to prevent the payment of political campaign contributions by amending an earlier appropriation made to finance both political campaign and childcare credits. This action was taken in section 140 of HCS CSSS 409(Fin) am H (Raeng). Section 140 provides:

Sec. 140. Section 1, ch. 3, SSLA 1980 is amended to read:

Section 1. The sum of \$112,042,000 is appropriated from the general fund to the Department of Revenue

(1) for refunds to individuals and fiduciaries for income taxes paid after December 31, 1978 for all or part of a tax year occurring after December 31, 1978 and

(2) for childcare [1979 AND 1980] tax credits payable under AS 43.20.013.

In section 140, the legislature attempted to accomplish two things. First, it makes the unobligated balance of the \$112,042,000 appropriation available for at least an additional claim year by removing the reference to the 1979 and 1980 claim

Hon. Mary Nordale, Commissioner
Department of Revenue
356-031-85

August 1, 1984
Page #2

years */ and, second, it inserted the word "childcare" in the statement of purpose of the appropriation so that the major source of funding for the credit would be sabotaged.

We believe the extension of a lapse date is without question within the legislature's power to appropriate. However, the attempt to radically restrict the objects of expenditure under an existing appropriation is an abuse of the legislature's power because it constitutes an attempt to retroactively amend or repeal AS 43.20.013(a). The Department of Revenue advises that if this amendment is effective, no money remains available to pay refunds to individuals who have made political campaign contributions since 1979. Repeal of the credits established under AS 43.20.013 should be presented to the governor in a separate non-appropriation bill so that all of the safeguards specified by the Alaska Constitution for the enactment of bills into law are operative.

It is significant that AS 43.20.013(a) and (b) provide that individuals are "entitled" to these credits. The credits are commonly referred to as "refundable credits." The refundable credits represent a holdover from the now repealed individual income tax and represent refunds to individuals in the same manner as a refund of excess withholding. See AS 43.20.013(c). The program could be viewed as a reimbursement of money paid by individuals on behalf of the state to third persons, i.e., candidates or day care operators. The credit encourages individuals to directly provide financing for these worthwhile purposes. The program avoids or minimizes a direct state subsidy to these third persons and in effect makes the public a major source of financing for these activities. In return, the state reimburses the public. So long as AS 43.20.013 remains state law, individuals who expend money consistent with the law may have a claim against the state for their entitlement. We believe the legislature cannot retroactively defeat claims for refundable credits for the 1979 and 1980 claim years. See AS 01.10.100(a). We also believe that the legislature may not use its appropriation power to prospectively repeal the entitlement established under AS 43.20.013.

*/ The Department of Revenue has implemented AS 43.20.013 by the adoption of 15 AAC 20.042. These regulations permit an individual to claim a credit under AS 43.20.013 within three years after the year in which the contribution is made. By removing the claim years from the 1980 appropriation, we presume the legislature intended to reappropriate the unobligated balance of the appropriation for the 1984 claim year.

Hon. Mary Nordale, Commissioner
Department of Revenue
366-031-35

August 1, 1984
Page #3

The difficult part of your question concerns the power of the legislature to change the purpose of existing appropriations. It is common for the legislature to make clarifications of the purpose of an appropriation in response to circumstances which permit more effective use of the money. However, an amendment to an appropriation can never conflict with existing law or be used to extinguish an entitlement vested under general law. The Alaska Constitution prohibits the amendment or repeal of substantive law by the enactment of appropriations. Article II, section 13 of the Alaska Constitution provides in relevant part:

Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title.

The purpose of the Framers in restricting appropriations bills to appropriations was to avoid the practice of "log-rolling." Alaska Constitutional Convention, Commentary on Legislative Article at 7, Committee Proposal No. 5 (Dec. 14, 1955). Logrolling occurs when a measure which could not command majority legislative support on its own merits is combined with another measure or measures, and cumulatively they obtain passage. It is a particularly insidious practice when it occurs through an appropriations bill, because appropriations bills often come before the legislature for a vote on final passage in a form which cannot be amended. Various courts have noted the evil inherent in the practice. Flanders v. Morris, 558 P.2d 769, 772 (Wash. 1977), ("It is obvious why a legislator would hesitate to hold up the funding of the entire state government in order to prevent the enactment of a certain provision, even though he would have voted against it if it had been presented as independent legislation"); Sellers v. Frohmler, 24 P.2d 666, 669 (Ariz. 1933).

There are other purposes of the "confinement" requirement in appropriations bills. The requirement prevents avoidance of the governor's item veto power by the inclusion, in an appropriation item, of material which actually is a "general law" measure:

The legislature cannot by location of a bill give it immunity from executive veto. Nor can it circumvent the Governor's veto power of substantive legislation by artfully drafting general law measures so that they appear to be true conditions or limitations on an item of appropriation.

Hon. Mary Nordale, Commissioner
Department of Revenue
366-931-65

August 1, 1964
Page #4

Hearv v. Edwards, 346 So. 2d 153, 153 (La. 1977).

Judge Carpeneti, in the only Alaska case to address the confinement issue, noted that it is extremely difficult to uncover the proper test to determine when an appropriation goes beyond what is permitted by the constitution. Legislative Budget and Audit Committee v. Hammond, No. 1JU-30-1163 CIV (Alaska Super., July 17, 1980), Memo. Decision at 40. Virtually every court which has been faced with this issue has announced that it should be decided on a "case by case" basis. As the Supreme Court of Nebraska said in deciding a confinement case:

All authorities are in agreement that it is impossible to fix exact limits in the area of constitutional separation of powers. All states approach the problem on a case-by-case basis.

State ex rel. Meyer v. State Board of Equalization and Assessment.

The Alaska Supreme Court has not yet decided a case raising a claim that particular amendment of an existing appropriation violates the constitutional requirement that bills for appropriations be confined to appropriations. There are cases construing the single subject rule, which is also found in article II, section 13, e.g., Short v. State, 600 P.2d 20 (Alaska 1979). However, because of the distinction between appropriation bills and other bills, the Alaska cases construing the single subject rule are of very little value in interpreting the confinement requirement. Legislative Budget and Audit, No. 1JU-30-1163 CIV at 42.

Appropriations bills may and almost always do include appropriations for several purposes. By definition they embrace many unrelated subjects. For this reason, the cases interpreting the single subject rule are of little direct assistance in interpreting the confinement requirement. It is probable that the Alaska Supreme Court would not automatically apply its single subject rule analysis to a confinement case, but would adopt a rule appropriate to confinement cases.

In Biles v. Department of Public Welfare, 403 A.2d 1341 (Pa. Comm. 1979), the court announced the following test for determining the propriety of material inserted in an appropriations Act:

To be constitutional the language in an appropriation bill must be germane to the appropriations,

Hon. Mary Nordale, Commissioner
Department of Revenue
366-031-35

August 1, 1984
Page 45

must not conflict with existing law, and it must not extend beyond the life of the appropriations bill itself.

Biles, 403 A.2d at 1343. While observing that the Biles test is "superficially attractive," Judge Carpeneti modified it because he felt "the test does not go far enough." Legislative Budget and Audit, No. 1JU-80-1163 CIV at 43. He reasoned that under the Biles test, the legislature could enact or repeal general law through an appropriations bill, and do so session after session, and completely render the confinement requirement meaningless.

After a careful review of relevant authority, the superior court expressed its view of the confinement provision by announcing the following test to be used in evaluating conditions added to appropriations:

[T]he qualifying language must be the minimum necessary to explain the Legislature's intent regarding how the money appropriated is to be spent. It must not administer the program of expenditures. It must not enact law or amend existing law. It must not extend beyond the life of the appropriation. Finally, the language must be germane, that is, appropriate, to an appropriation bill.

Legislative Budget and Audit, No. 1JU-80-1163 Mem. Decision at 44-45 (emphasis added, footnotes omitted).

Every instance where language is challenged in an appropriations bill is a new case which must be examined separately. Courts applying what appear to be similar tests to apparently similar facts reach opposite conclusions. Compare Welden v. Ray, 229 N.W.2d 706, 710 (Iowa 1975), with Henry v. Edwards, 346 So. 2d 153, 159-165 (La. 1977). We contend that the legislature may not indirectly repeal AS 43.20.013(a) by the amendment of the purpose of an appropriation. The constitution requires the legislature to place such a measure before the governor in a separate bill. Therefore, we believe you may ignore the purported amendment which limits the purposes for which the appropriation may be spent. We also find that there is no legislative intent to make the lapse date extension nonseverable from the other amendments contained in section 140. Under these circumstances, we believe the presumption of severability set out in AS 01.10.-030 controls.

JLS/pj3

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STATE OF ALASKA THE LEGISLATURE

HOUSE - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

August 9, 1984

SUBJECT: Appropriation for payment of tax credits
(HCS CSSB 409(Fin) am H (Reengrossed))

TO: Representative Terry Martin

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

You have asked me to review an Attorney General's Opinion dealing with the amendment during last session of an appropriation originally enacted in 1980 for payment of tax credits under AS 43.20.013. (Attorney General's Opinion, 366-031-85, August 1, 1984) A brief explanation of the situation follows.

The original appropriation contained in Section 1, ch. 3, SSSLA 1980 was to be used for refunds for income taxes paid after December 31, 1978 for a tax year occurring after that date and "... for 1979 and 1980 tax credits payable under AS 43.20.013." While the appropriation did not contain a lapse clause, arguably this could have been treated as a one-year appropriation which would have lapsed at the end of the fiscal year on July 1, 1981. Instead the Department of Revenue adopted a regulation that first became effective on October 9, 1980 permitting individuals to claim a credit under AS 43.20.013 within three years after the year in which the contribution is made. (15 AAC 20.042) Apparently, on the strength of this regulation the Department of Revenue placed the appropriation in a non-lapsing account. Even though the last day on which a claim could have been filed under the original appropriation and the regulation was December 31, 1983 the balance of the appropriation was not moved into the general fund but was kept in the non-lapsing account.

The legislature addressed this situation by enacting two conflicting sections in HCS CSSB 409(Fin) am H (Reengrossed). Section 140 provides:

Sec. 140. Section 1, ch. 3, SSLA 1980 (sic) is amended to read:

Section 1. The sum of \$112,042,000 is appropriated from the general fund to the Department of Revenue

(1) for refunds to individuals and fiduciaries for income taxes paid after December 31, 1978 for all or part of a tax year occurring after December 31, 1978; and

(2) for childcare [1979 AND 1980] tax credits payable under AS 43.20.013.

Section 228 provides:

Section 228. Section 1, ch. 3, SSSLA 1980, is amended to read:

Section 1. The sum of \$106,291,900 [112,042,000] (sic) is appropriated from the general fund to the Department of Revenue

(1) for refunds to individuals and fiduciaries for income taxes paid after December 31, 1978 for all or part of a tax year occurring after December 31, 1978; and

(2) for 1979 and 1980 tax credits payable under AS 43.20.013.

The intended result of Section 228 was to lapse the balance of the original appropriation retained in the non-lapsing account into the general fund. The Governor, however, vetoed this section on July 14, 1984 leaving Section 140 intact, and signed the bill into law on the same day.

It is fundamental that only the legislature has the power to appropriate state funds. (Article IX, Section 13, Constitution of the State of Alaska) Section 140 has the effect of extending the original appropriation. The Attorney General recognizes the power of the legislature to do so in the opinion. "We believe the extension of a lapse date is without question within the legislature's power to appropriate." (Attorney General's Opinion, 366-031-85, August 1, 1984, page 2) However, the Attorney General asserts that the attempt to restrict the object of the expenditure to

childcare tax credits payable under AS 43.20.013(b), rather than allowing the money to continue to be used for all tax credits payable under that section, amounts to an attempt to retroactively amend or repeal AS 43.20.013(a).

The retroactivity argument seems to be based on an assertion that the legislature by amending the original appropriation is somehow attempting to defeat claims for political campaign contributions made during 1979 and 1980. However, under the Department of Revenue's own regulation, claims for contributions made during 1979 were barred after December 31, 1982 and claims for contributions made during 1980 were barred after December 31, 1983. The amendment to the original appropriation did not take effect until July 15, 1984, so it is difficult to understand how this can be viewed as an attempt on the part of the legislature to retroactively cut off those claims. It could have had no effect on those claims.

The Attorney General also asserts that the amendment to the original appropriation indirectly repeals AS 43.20.013(a) or repeals that subsection by implication. It seems to me that a court is more likely to find that the amendment has no effect on any part of AS 43.20.013. There exists a long-established judicial policy disfavoring the implied repeal of statutes. (United States v. Borden, 308 US 188 (1939); Cook v. United States, 288 US 102 (1933); Watt v. Alaska, 451 US 259 (1981)) The cases that consider implied repeals deal with situations in which one piece of substantive legislation appears to conflict with another, and in such situations the court will attempt to construe both statutes so that each is preserved. It goes even further to argue that a court would find that an appropriation might have the effect of impliedly repealing a substantive statute. I believe that a court would find, if faced with the question, that the amendment to the original appropriation merely has the effect of providing funding for claims payable under AS 43.20.013(b), but not for claims payable under AS 43.20.013(a).

One reason the Attorney General offers for objecting to the use of an amendment to an existing appropriation to impliedly repeal AS 43.20.013(a), is that such a repeal should be offered as substantive legislation subject to veto by the Governor. This is undoubtedly correct if the legislature were, in fact, attempting to repeal AS 43.20.013(a). However, the Attorney General in this opinion ignores the

fact that the Governor was free to veto Section 140 if he did not like the method used by the legislature in amending the original appropriation. In fact, the Governor vetoed Section 228 which would have simply provided for the lapse of money that could not be used under the terms of the original appropriation.

As far as I can tell, the Attorney General in this opinion is essentially objecting to the fact that the legislature in amending the original appropriation provided funding for tax credits payable under AS 43.20.013(b) but did not provide funding for credits payable under AS 43.20.013(a). Since there is apparently no other source of funds for payment of those credits, the opinion expresses the concern that individuals entitled to those credits may have a cause of action against the state on the theory that the tax credit program contained in substantive law vests the intended recipients with a right to the money. It appears to me unlikely that a court would find that the enactment of a grant program entitles the intended recipient to payment under the program in the absence of an appropriation to fund the program. In fact, AS 43.20.013(c) specifically conditions payment of the credit on an appropriation for the purpose. That subsection states in part:

A credit under this section shall be paid in the manner provided in AS 43.20.030(e) for the payment of refunds and payment may not be made without an appropriation for that purpose.

In any case, it might be more appropriate for the individuals impacted by the lack of funding for AS 43.20.013(a) to bring an action against the state to determine any question that may exist as to whether the statute confers an absolute or vested right, rather than for the executive branch of government to ". . . ignore the purported amendment which limits the purposes for which the appropriation may be spent" as the Attorney General advises. (Attorney General's Opinion, 366-031-85, August 1, 1984, page 5).

As the Attorney General notes, the precise issues dealt with in the opinion have not been addressed by the Alaska Supreme Court, so it cannot be said with certainty how the court would respond if faced with a challenge by the legislature to the action that the Attorney General advises the Department of Revenue to take. It appears to me that the

LEWIS & CLARK DISTRICT COURT
Representative Terry Martin
August 9, 1984
Page 5

legislature would however, have a reasonable basis for
challenging that action.

TBC:ojb
J8/071

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MEMORANDUM

State of Alaska

TO: Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit

DATE: February 5, 1985

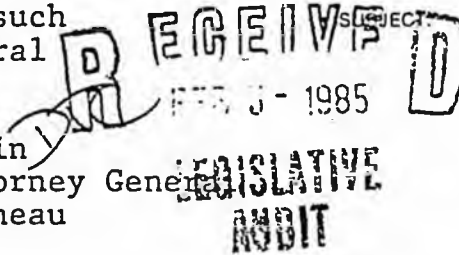
FILE NO: 366-320-85

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Requirements for
organizations
under the political
contribution credit
program

By: Diane T. Colvin
Assistant Attorney General
Commercial-Juneau



In conjunction with an audit of the political contribution credit program administered by the Department of Revenue, you have asked whether national political parties and national special interest groups qualify under AS 43.20.013(a), which provides for payments to individuals for contributions made to certain political candidates and organizations. We conclude that a national organization may qualify if the purpose for which it is organized meets the criteria set forth in AS 43.20.013(a).

AS 43.20.013(a) provides as follows:

- (a) A resident individual is entitled to a tax credit not to exceed \$100 for
- (1) a contribution made in a calendar year to a person or organization for use exclusively
 - (A) for a political campaign for a candidate for
 - (i) President or Vice President of the United States, whether or not the candidate will be voted on in a primary election in Alaska;
 - (ii) United States senator from Alaska;
 - (iii) United States representative from Alaska;
 - (iv) governor or lieutenant governor of Alaska;
 - (v) the Alaska legislature;
 - (vi) delegate to an Alaska constitutional convention;
 - (vii) electoral confirmation as a judge or justice of a court in Alaska; or
 - (viii) municipal office in Alaska; or
 - (B) by a group seeking to influence the outcome of a ballot proposition or question in Alaska; and
 - (2) dues paid in a calendar year to a non-profit organization organized primarily for the purpose of influencing elections in Alaska.

Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
366-320-85

February 5, 1985
Page 2

AS 43.20.013(a) places no geographical limitations on an organization. It does, however, impose requirements regarding the purpose of the organization. Thus, a national organization such as "Mondale for President" would qualify because it is organized for the purpose set forth in AS 43.20.013(a)(1)(A)(i) -- it is a political campaign organization supporting a candidate for the Presidency. On the other hand, a contribution to the Republican National Committee would not qualify, because it is not organized exclusively for one of the purposes listed in AS 43.20.013(a)(1)(A)(i) - (viii). It may support the Republican nominee for President, but it also supports other candidates, such as Republican congressional candidates in other states, who are not covered by the statute.

Likewise, national special interest organizations do not qualify unless they are organized for the purposes set forth in AS 43.20.013(a). Thus, a nationwide organization could qualify if it were organized primarily to influence an Alaskan election. AS 43.20.013(a)(2). A state organization would not qualify unless, like the Alaska Environmental Action Committee, it were organized primarily for the purpose of influencing elections in the state. The organizations you list in your memorandum (National Rifle Organization, Audubon Society, National Wildlife Federation, Second Amendment Foundation) would not qualify because they are not organized primarily for the purpose of influencing elections in Alaska nor for any of the other purposes listed in AS 43.20.013(a)(1) and (2).

Focusing on the purpose of the organization fulfills, we believe, the legislative intent of the statute. AS 43.20.013(a), like sec. 41 of the Internal Revenue Code (providing for a tax credit for political contributions), was enacted not only for the obvious purpose of encouraging citizens to make contributions to candidates for public office, but also to "compensate" for the fact that contributions to political organizations are not tax deductible as charitable contributions for income tax purposes. See I.R.C. §§ 501, 527 (West 1984). Thus, a contribution must be made to a legitimate political organization in order to qualify as a credit. A charitable organization that incidentally supports a candidate or proposition does not come under the purview of the statute.

Determining whether or not a contribution is made for one of the purposes covered by the statute creates a difficult administrative problem for the Department of Revenue. The purpose of an organization is not always apparent from its name. In addition, it is difficult for the department to identify all the organizations in the state that may be organized for the

Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
366-320-85

February 5, 1985

Page 3

purposes listed in AS 43.20.013(a). This task, in order to be done accurately and efficiently, will probably require additional personnel, and assistance from the Division of Elections and the Alaska Public Offices Commission (APOC).

The other problem created for the department is a public relations one. An organization, in order to encourage contributions, may "advertise" to the public that it qualifies under AS 43.20.013(a) when in fact it does not. Based on a representation of this kind, the contributor will apply to the department for a refund, which may be denied because the contribution was not earmarked exclusively for one of the purposes listed in AS 43.20.013(a). Persons denied a refund are more likely to voice their dissatisfaction with department personnel than with employees of the organization who made the erroneous representation.

One way of easing the administrative burden on the department may be to amend the current regulation, 15 AAC 20.042, which requires, in effect, that a group supporting or opposing a ballot proposition must be registered with the Alaska Public Offices Commission in order to qualify. This registration requirement could be extended to cover most candidates and groups, except those that are not otherwise required to register with APOC, such as groups supporting candidates for national offices. For those organizations that are required to register, the use of registration as a qualifier would probably help to expedite the processing of applications for refunds.

We hope this provides sufficient information for concluding your audit. If you wish further information, please contact us.

NCG:DTC:cct

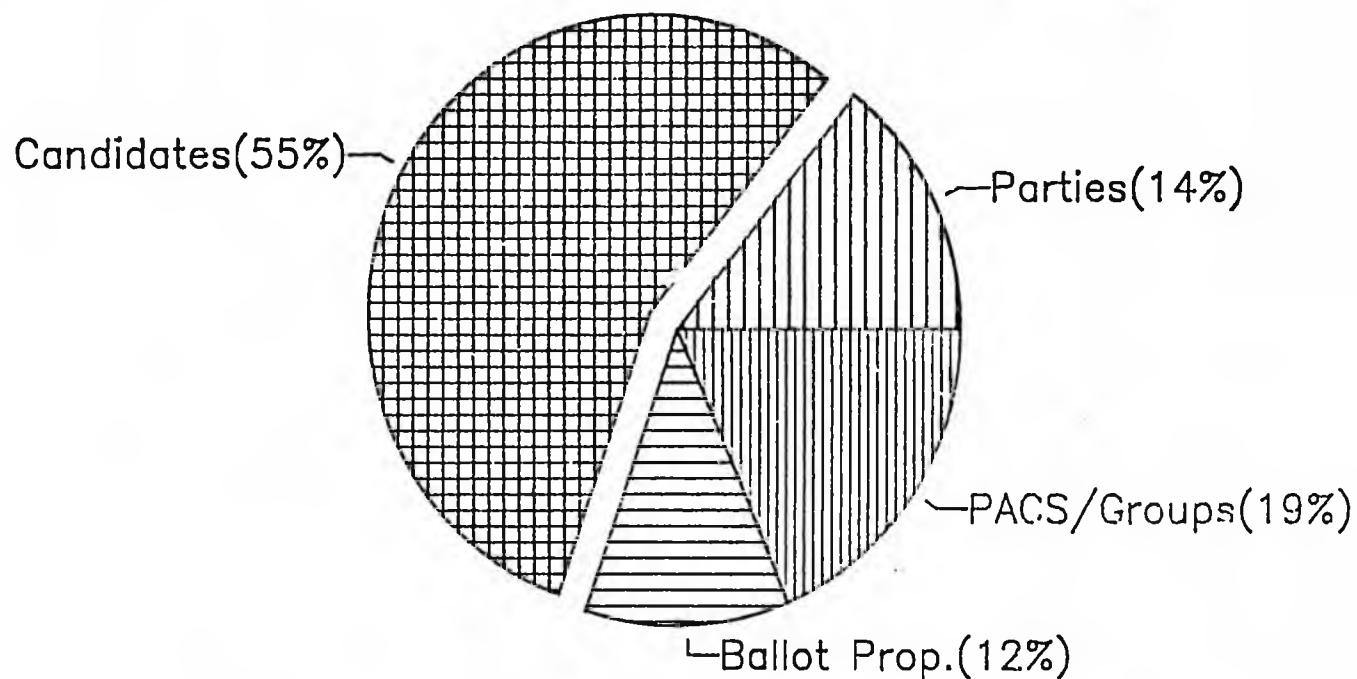
cc: Ervin Jones, Director
Administrative Services Division
Department of Revenue

Theda S. Pittman, Director
Public Offices Commission
Department of Administration

Sandi Stout, Director
Division of Elections
Office of the Lieutenant Governor .

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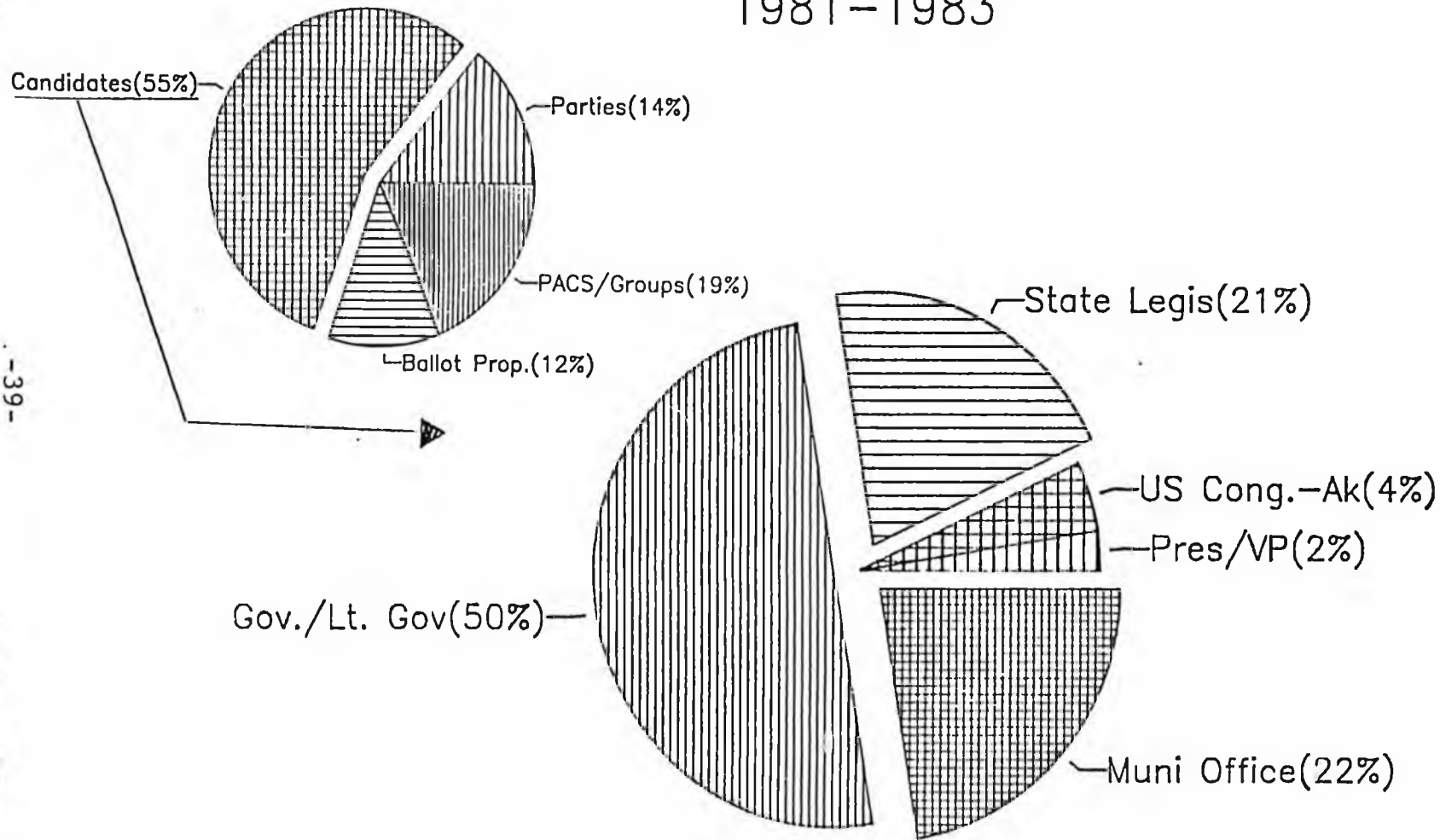
PCC for Contributions / Category of Recipient 1981-1983



Out of Total of \$ 2,428,000

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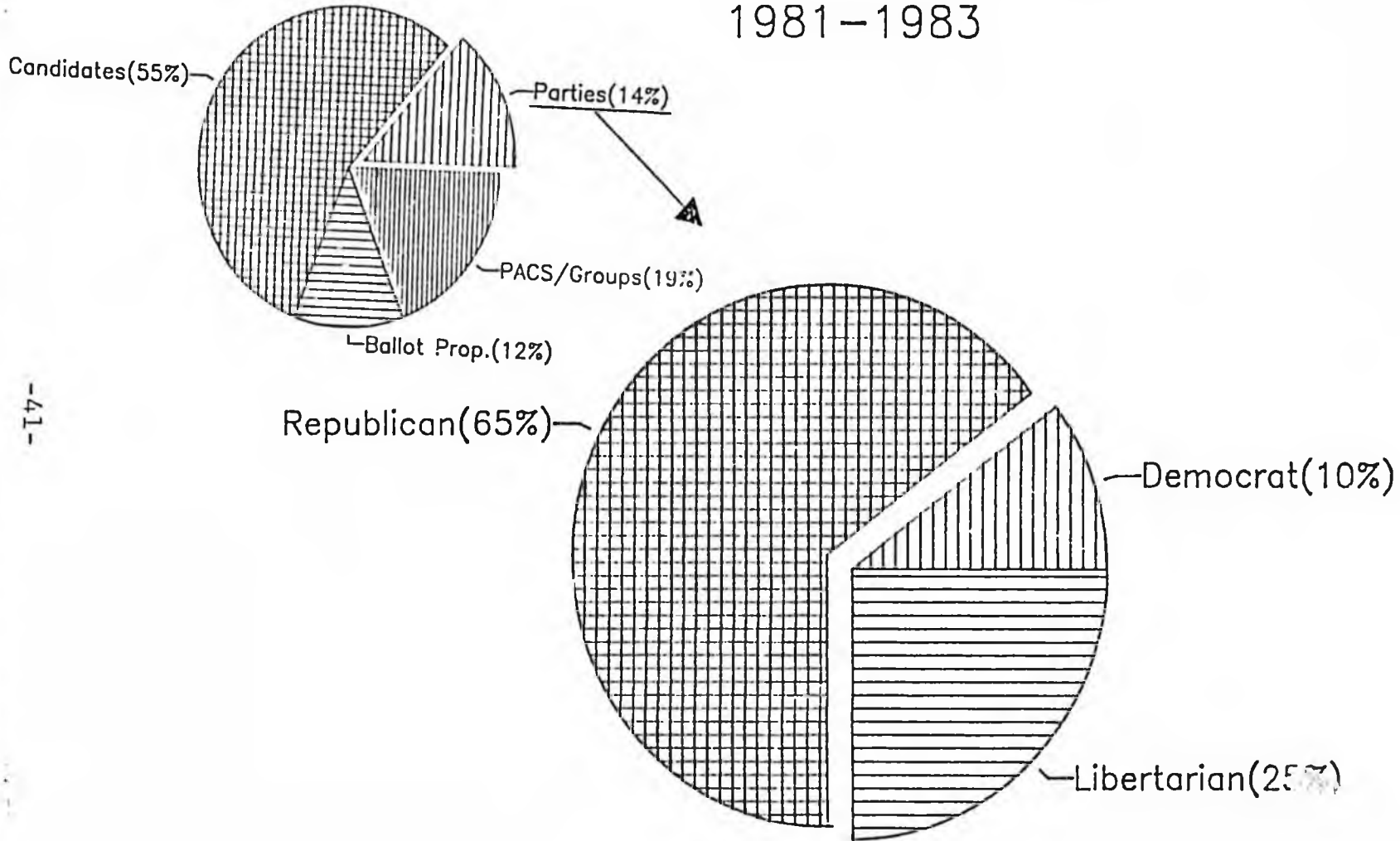
PCC for Contributions / Elective Office 1981-1983



Out of a Projected \$ 1,345,355

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PCC for Contributions / Political Parties 1981-1983



-17-

Out of a Projected \$ 348,400

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STATE OF ALASKA

DEPARTMENT OF REVENUE

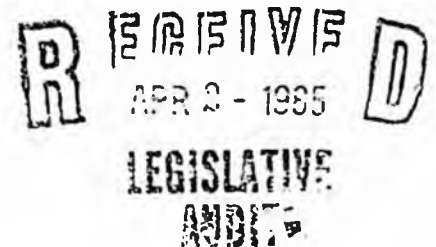
OFFICE OF THE COMMISSIONER

April 2, 1985

BILL SHEFFIELD, GOVERNOR

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, AK 99811



re: Preliminary audit reports on: "A Special Report on the Department of Revenue, Political Contribution Credit Program, Claim Years 1981-1983, February 15, 1985."

Dear Mr. Wilkerson:

Recommendation No. 1

The Department of Revenue (DOR) should develop and implement better review procedures of political contribution credit claims to prevent payment of credits for contributions to ineligible recipients.

I agree that better review procedures should be developed and implemented, and have directed that the two divisions involved, Audit and Administrative Services, begin immediately to explore such improvements. The question remains, however, one of materiality and resource allocation. Your findings show that aside from the payments made based on contributions to national parties, the Department erred in paying 15 out of 400 cases sampled for a projected error amount of approximately \$60,000 over a three year period, an average annual error amount of \$20,000. In evaluating this finding, one must consider that the salary and benefits cost of one additional Document Processor I, range 7, is \$24,262 per year. This raises serious questions in my mind as to the cost/benefit of increasing our efforts. In my analysis, I have discounted those errors related to national political parties, since based on this latest interpretation, it will be a fairly simple revision to make prospectively.

A notice regarding the national political party contributions will be included in the 1985 Refundable Credit Claim form, as suggested.

Finally, you suggest that the Department of Revenue should determine if identification and recovery of claims paid in error would be cost-effective. We will evaluate the cost of such an undertaking and the potential benefits, and as you suggest, proceed accordingly.

Gerald L. Wilkerson
April 2, 1985
Page 2

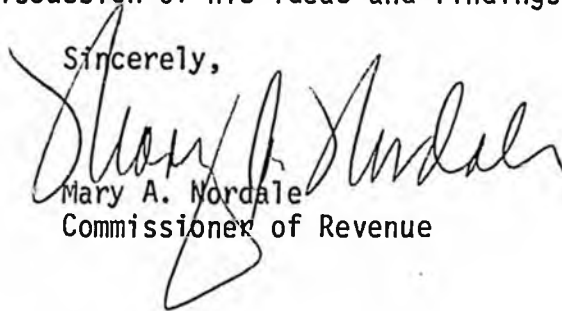
Recommendation No. 2

DOR should improve its data processing edit functions to reduce the possibility of making duplicate payments for political contribution credits.

Although I agree with you that \$4,000 is not a significant amount compared to the \$2,427,840 paid out in the same period, we will immediately implement the SSN matching process in processing claims filed in 1985. The fact that this step was left out was an error of omission, as we did at one time perform such an edit check.

Thank you for your careful review of the Political Campaign Credit system. The in-charge auditor, Jim Griffin, conducted the audit in a very professional and very efficient manner. I hope that as my staff works toward implementation of your recommendations, we may feel free to call upon Mr. Griffin for further discussion of his ideas and findings.

Sincerely,



Mary A. Nordale
Commissioner of Revenue

MAN:EJ:ms