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

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

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

ARTICLE 2

CONTRIBUTION AND EXPENDITURES - LIMITATIONS AND PROHIBITIONS

AS 15.14.120 - Contributions by Persons

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

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

AS 15.14.130 - Contributions By Political Groups

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

AS 15.14.140 - Limitations on Cash Contributions

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

AS 15.14.150 - Expenditures

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

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

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

AS 15.14.160 - [redacted]

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

ARTICLE 4

CAMPAIGN MISCONDUCT AND ADMINISTRATION

AS 15.14.170 - Campaign Officers

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

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

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

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

AS 15.14.180 - Use of Campaign Funds

There appear to be no technical problems with this subsection.

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

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

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

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

AS 15.14.200 - Surplus Campaign Funds

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

AS 15.14.210 - Solicitation of Contributions

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

AS 15.14.220 - Identification of Communication

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

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

ARTICLE 5

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

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

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

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

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

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

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

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

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

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

Typographical Problems:

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

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

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

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

AS 15.14.260 - Payment of Fines

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

AS 15.14.270 - Removal from Office

We have no technical concerns with this provision.

AS 15.14.280 - Limitations on Actions

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

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

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

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

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

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

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

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

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

Page 35, line 11 - should read AS 15.14.230.

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

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

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

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

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

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

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

AS 15.14.340 - Confidentiality

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6

MISCELLANEOUS PROVISIONS

AS 15.14.380 - Definitions

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

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

AS 15.14.380(1) - "Candidate"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

cc: Pat Kennedy
Dick Monkman
Gross & Burke
Brooke Miles

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

02-0018 (Rev. 10/76)

STATE of ALASKA

MEMORANDUM

RECEIVED
JAN 10 1978
PUBLIC OFFICES COMMISSION

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

DATE: January 5, 1978

FILE NO: J-66-365-78

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

By:
Rodger W. Pegues
Assistant Attorney General

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

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

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

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

We concur with the staff's recommendation that no

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

RWP/pjg

FPPC

BULLETIN

FAIR POLITICAL PRACTICES COMMISSION

October 1, 1985
Vol. 11, No. 10

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

REFORM LEGISLATION ENACTED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MEMORANDUM State of Alaska

TO: Commission Members

DATE: August 16, 1985

[11]

TELEPHONE NO:

FROM: Chris Johansen
Associate Coordinator

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

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

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

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

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

.....

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.....

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY OF PROCEDURES FOR RECEIPTS

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

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

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

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

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

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

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

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

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

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

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

ALASKA STAR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MEMORANDUM State of Alaska

TO: Commission Members

DATE: June 13, 1984

[8A]

TELEPHONE NO:

FROM: Theda S. Pittman
Chris Johansen

SUBJECT: Expenditures Before Filing

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

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

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

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

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

Excessive Non-monetary Contributions

The Campaign Disclosure Law defines a "contribution" to include

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

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

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

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

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

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

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

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

Pre-Filing Expenditures

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

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

Adams Management Service - sausage for fundraiser, $217.25.

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

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

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

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

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

Registered Treasurers

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

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

Proper Identification of Fund-raiser Invitation

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

Unreported Monetary Contribution

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

Conclusion

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

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

BILL SHEFFIELD, GOVERNOR

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ALASKA PUBLIC OFFICES COMMISSION

May 1, 1985
Telecopy - This sheet plus 6

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

Dear Senator Abood and members of the Committee:

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

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

CONTRIBUTIONS TO CANDIDATES & EXPENDITURES BY CANDIDATES

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

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

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

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

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

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

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

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

CONTRIBUTIONS TO PACS AND PARTIES AND EXPENDITURES BY PACS AND PARTIES

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

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

3. See number 1 above.

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

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

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

USE OF CAMPAIGN FUNDS, SURPLUS FUNDS, DEBT REPAYMENT.

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

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

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

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

CRIMINAL PENALTIES

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

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

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

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

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

CIVIL PENALTIES AND PROCEDURES

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

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

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

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

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

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

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

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

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

Theda Pittman

Theda Pittman
Executive Director

cc: Rebecca Burch, Special Assistant
Dept. of Administration

STATE OF ALASKA

ALASKA PUBLIC OFFICES COMMISSION

BILL SHEFFIELD, GOVERNOR

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October 28, 1985

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

Dear Senator Abood & Members of the Committee:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

Jean Rogers/ho

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

Amendments to APOC Bill (1/14 Draft)

(6) Page 16, line 10, after "group" add the following:

and may not contribute in the aggregate more than $10,000 during a year to candidates or groups generally other than to groups formed solely for the purpose of supporting or opposing a ballot proposition or question.

(7) Page 16, line 15, delete subsection (d) and replace it with the following:

A political party and its state, regional, and local subdivisions may not contribute in the aggregate more than $5,000 to each candidate for political office.

V. FISCHER

Amendments to APOC Bill (1/14 Draft)

(3) Page 15, line 19, after "person" add "other than a corporation or labor union"

(4) Page 15, line 22, after "person" add "other than a corporation or labor union"

(5) Page 17, line 7, add the following new subsections (a) and (b), and renumber remaining subsections accordingly:

> (a) A corporation or a labor union may not make a contribution in any amount to a candidate, political party or to a political interest group other than a political interest group formed solely for the purpose of supporting or opposing a ballot proposition or question.
>
> (b) A candidate, a political party, and a political interest group other than a political intreest group formed solely for the purpose of supporting or opposing a ballot proposition or question, may not accept a contribution from a corporation or a labor union.

V.FISCHER

Amendments to APOC Bill (1/14 Draft)

(1) At page 7, line 9, add the following new subsection (b) and renumber remaining subsections accordingly:

> (b) Two or more groups that share a common officer shall be treated as a single group for the purpose of determining whether the group has received contributions of $1,000 in the aggregate.

1/31/86

PROPOSED AMENDMENTS TO SB 356, "An Act relating to campaign financing."

BY SEN. ABOOD

Amendment # 1

Page 4, line 6, after "commission." Add "The prohibitions against political activity by a member of the commission under (h) of this section apply to the executive director and non-clerical employees of the commission."

Amendment # 2

Page 15, line 16, after "affirm" Add " to the best of my knowledge"

Amendment # 3

Page 17, line 7, after "candidate" Add ", a campaign treasurer, deputy campaign treasurer"

Amendment # 4

Sec._____ Conflict of interest. The executive director and non-clerical employees of the commission are subject to AS 39.50 (conflict of interest).

(This is patterned after the conflict of interest provision for the Ombudsman and the professional staff of the Ombudsman, AS 24.55.310.)

Alaska State Legislature

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Senator Mitch Abood
CHAIRMAN

Senate Committee on State Affairs

Subject: APOC Reality Check (a sampling of criminal penalties)

CLASS C FELONIES

Criminally negligent homicide
Sexual abuse of a minor in the 3rd degree
Incest
Endangering the welfare of a minor
Escape in the 3rd degree
Promoting contraband in the 3rd degree
Terrorist threatening
Riot
Distribution of child pornography
Promoting prostitution in the 3rd degree
Jury tampering
Tampering with a witness in the 3rd degree
Misconduct involving a controlled substance in the 4th degree
Assault in the 3rd degree
Coercion
Theft in the 2nd degree (more than $500 but less than $25,000)
Custodial interference in the 1st degree (causing the victim to be removed from the State)
Issuing a bad check (more than $500 but less than $25,000)
Obtaining a credit card by fraudulent means
Burglary in the 2nd degree
Commercial bribe receiving

CLASS A MISDEMEANORS

Sexual abuse of a minor in the 4th degree
Assault in the 4th degree
Theft in the 3rd degree
Criminal nonsupport
Unlawful marrying
Tampering with a witness in the 2nd degree
Driving while intoxicated
Resisting or interfering with arrest
Misuse of confidential information
Interference with constitutional rights
Misconduct involving a corpse

CLASS B MISDEMEANORS

Indecent exposure
Prostitution

Alaska State Legislature

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Senator Mitch Abood
CHAIRMAN

Senate Committee on State Affairs

In this packet are the A.P.O.C. Administrative Regulations discussed during Senate State Affairs' January 17, 1986 hearing.

Enclosed is the following material:

11/14/85 Department of Law letter and edited A.P.O.C. regulations.

11/25/85 Letter from Chairman Abood - giving A.P.O.C. notice that the State Affairs Committee intended to review proposed regulations prior to promulgation.

Additional regulations edited by Department of Law on 12/5/85.

A.P.O.C. regulations adopted by Lt. Governors' office on 1/4/86.

Note: The Committee on State Affairs never received a written reply form A.P.O.C. to their 11/25/85 letter.

C

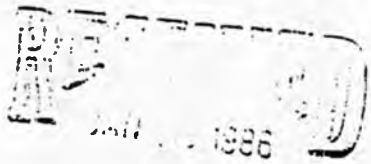
ALASKA PUBLIC OFFICES COMMISSION

Administrative Regulations

AS 15.13 - Campaign Disclosure,

Complaints and Hearings, General Provisions

January 4, 1986



Document #4

In 1985, the Alaska Public Offices Commission added or amended seventeen administrative regulations, deleting seven. The new regulation on CONTRIBUTIONS, 2 AAC 50.313, replaces information previously found under NON-MONETARY CONTRIBUTIONS, TRANSPORTATION EXPENDITURES, PROFESSIONAL SERVICES, and LOANS. Language about GROUPS, 2 AAC 50.314, replaces REPORTING BY BUSINESS AND TRADE ASSOCIATIONS and REPORTING BY A BUSINESS ENTITY OR LABOR ORGANIZATION.

New concepts were introduced in three specific instances. DESIGNATED CAMPAIGN DEPOSITORY, 2 AAC 50.319, requires campaigns to label, identify, report, and limit activity to specific bank accounts, if their transactions exceed $5000. POST ELECTION CAMPAIGN FUNDRAISING, 2 AAC 50.410, establishes a requirement for commission review of post-election fundraising if campaign debts are not paid off in the calendar year after an election. ADVISORY OPINIONS, 2 AAC 50.905, establishes a procedure for opinion requests of proposed activity.

Several policy changes were made of varying impact. MUNICIPALITIES, 2 AAC 50.360, now permits municipal entities to report their ballot issue and bond information efforts on the same forms used by individuals. PERSONAL CONTRIBUTIONS BY A CANDIDATE, 2 AAC 50.316, in addition to clarifying the use of personal assets, funds from property sales, jointly owned goods by a candidate, now requires that candidates report their own non-monetary contributions, such as goods from a prior campaign. EARLY CAMPAIGNING, 2 AAC 50.380, now permits state candidates to begin campaigning once they have filed a "letter of intent" with the Commission (formerly, they had to first register with the Division of Elections). CONTRIBUTIONS IN THE NAME OF ANOTHER, 2 AAC 50.357, prohibits parent organizations from directing contributions through their subsidiaries, sub-chapters or local units; prohibits parents from contributing in the name of their children; and prohibits employers from contributing in the name of their employees. Prior to 1986 corporate parent-subsidiary contributions had been permitted if the relationship was disclosed when the contributions were reported.

Of special interest to campaigns which have had difficulty meeting filing deadlines is CIVIL PENALTY ASSESSMENTS 2 AAC 50.390: the minimum initial CPA has been raised to $10 per day for all reports, except the 7 Day Pre-election and the 24 Hour reports, where the minimum has been raised to $50 per day.

The remainer of the regulation changes were either limited in their impact or clarifications or formalization of prior policies. Please note the changes below: PROPER IDENTIFICATION, 2 AAC 50.369 - formalizes prior policy that envelopes do not have to be identified as "paid for by". OBJECTS TOO SMALL TO BE IDENTIFIED, 2 AAC 50.370, - formalizes that objects smaller than 3 x 1/2" x 3" need not be identified, and that all media advertising must be identified. AVAILABILITY OF REPORTS FILED WITH THE COMMISSION 2 AAC 50.910 - formalizes policy that reports filed with the Commission may be obtained at cost (usually 10¢ per page). COMPLAINTS, PRELIMINARY INVESTIGATION, and HEARINGS, 2 AAC 50.450, .460 and .470 deal with procedures to be followed in the event that a complaint is filed, a preliminary investigation is made, and a hearing results.

INDEX

ALASKA ADMINISTRATIVE CODE
Title 2. DEPARTMENT OF ADMINISTRATION
ALASKA PUBLIC OFFICES COMMISSION REGULATIONS

CHAPTER 50. CONFLICT OF INTEREST, CAMPAIGN DISCLOSURE AND REGULATION OF LOBBYING

Articles 2, 3. & 5.

Section

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

facility is owned by or controlled by a political party, political group, or candidate; in that case, the cost of the news story is a contribution, unless the news story is a bona fide news account that is part of a general pattern of campaign-related news accounts which gives reasonably equal coverage to all opposing candidates in the circulation or listening area.

(2) a non-monetary contribution or in-kind donation of a single item with a usual and normal cost of $50.00 or less.

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

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

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

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

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

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

(1) every combination of two or more persons who are elected, appointed, or otherwise chosen, or who cooperate for the purpose of raising, soliciting, collecting, or disbursing money or anything of value, or for directing or controlling those activities to secure or defeat the election to public office of an individual or candidate or to secure or defeat a ballot proposition;

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

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

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

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

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

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

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

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

(b) Until the effective date of a statutory definition of "political party" that replaces AS 15.60.010(20) as it exists on the effective date of this section (and was held invalid in Wooler v. Miller, 660 P.2d 1192 [Alaska 1983]), a group, other than a group described in (a) of this section, desiring an exemption from the contribution limitation set out in AS 15.13.070(a) must submit to the commission an application for exemption. In accordance with (c) of this section, the commission will review the application and, in its discretion and on a case-by-case basis, grant the exemption.

(c) Among the criteria which will be considered in deciding whether to grant an exemption

(1) an organized membership, composed of registered voters, which represents a political program;

*APOC Note: Groups report on "Campaign Disclosure Statements." Individuals report on "Statement of Contributions" Form 15-5 or on "Statement of Expenditures" Form 15-6.

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

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

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

Authority: AS 15.13.030(10) AS 15.13.070
AS 15.13.040

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

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

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

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

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*APOC Note: Groups report on "Campaign Disclosure Statements." Individuals report on "Statement of Contributions" Form 15-5 or on "Statement of Expenditures" Form 15-6.

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

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

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

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

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

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

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

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

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

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

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

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

Authority: AS 15.13.030 AS 15.13.060
AS 15.13.050 AS 15.13.070

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

(b) A candidate or his treasurer, and the treasurer of a group, may issue a receipt, and shall record the receipt of every contribution received, unless otherwise exempted by this chapter, regardless of the dollar amount or value of the contribution. While the identity of a person who has contributed no more than $100 to a campaign is not required to be individually reported by the treasurer on a campaign disclosure report, the name of such a contributor, along with the amount and type of his contribution, must be recorded by the treasurer and maintained by the treasurer, for comparative purposes, in case that person makes additional contributions which total over $100.

(c) The identity of a person who has contributed over $100 in the aggregate per year to a candidate's or group's campaign must be reported in accordance with 2 AAC 50.321.

(d) Each bookkeeping record required under this section shall be maintained by the candidate or the treasurer of a group and may not be destroyed for a period of four years from the date of the contribution. The records shall be available for inspection by the commission upon request of the commission. (Eff. 5/14/80, Register 74)

Authority: AS 15.13.020(2) AS 15.13.040
AS 15.13.030(10) AS 15.13.120(e)

2 AAC 50.321. REPORTING CONTRIBUTIONS AND EXPENDITURES. (a) Each candidate or group filing reports under AS 15.13 must identify

(1) each monetary contribution, or aggregate of contributions from the same contributor, which totals in excess of $100 by reporting

(A) the date received;

(B) the check number;

(C) the name and address of the contributor;

(D) the principal occupation and employer of the contributor; and

(E) the amount;

(2) each non monetary contribution, or aggregate of non monetary contributions from the same contributor, valued at more than $100 a year, by reporting

(A) the date received;

(B) the name and address of the contributor;

(C) the principal occupation and employer of the contributor;

(D) a description of the contributions; and

(E) its estimated fair market value;

(3) each loan, or aggregate of loans from the same contributor which totals in excess of $100, by reporting

(A) the date received;

(B) the name and address of the lender, guarantor or cosigner;

(C) the principal occupation and employer of the lender, loan guarantor or cosigner;

(D) the interest rate; and

(E) the amount;

(4) each paid expenditure by reporting

(A) the date of the payment;

(B) the check number;

(C) the name and address of the payee;

(D) the purpose of the expenditure; and

(E) the amount;

(5) each accrued expenditure by reporting

(A) the date the expenditure was incurred;

(B) the name and address of the business or individual with whom the debt was incurred;

(C) the purpose of the accrued expenditure; and

(D) the amount.

(b) When reporting monetary and non-monetary contributions or loans, a cumulative total must be kept by each candidate or group of the contributions (including loans) made to it, regardless of the total, and reported pursuant to (a) of this section when

(1) monetary contributions by the same contributor bring the total to over $100; or

(2) nonmonetary contributions by the same contributor bring the estimated total value to over $100; or

(3) loans by the same lendor, guarantor, or cosigner bring the total to over $100; or

(4) a combination of monetary or nonmonetary contributions or loans by the same contributor brings the total to over $100. (Eff. 7/22/78, Register 67)

Authority: AS 15.13.030(10) AS 15.13.130(2) and (4)
AS 15.13.040(a) and (b)

2 AAC 50.322. RECORDKEEPING REQUIREMENTS FOR AUCTIONS AND GARAGE SALES. Repealed 5/14/80.

2 AAC 50.323. RECORDKEEPING REQUIREMENTS FOR CONTRIBUTIONS RECEIVED FROM THE SALE OF CAMPAIGN MATERIAL. Repealed 5/14/80.

2 AAC 50.324. SHARED CAMPAIGN REPORTING. Except for expenditures by the candidates for governor and lieutenant governor of the same political party who have been nominated to run in the general election, the following provisions apply to all candidates and groups, other than a political party, subject to the provisions of AS 15.13 and this chapter:

(1) The use, by one candidate, of the money, goods or services raised or generated by his campaign, to influence the election of another candidate, is considered a contribution and cannot exceed the $1000 limitation set by AS 15.13.070(a); nothing in AS 15.13 or this chapter, however, limits an individual's right to make any expenditure whatsoever to influence the election of a candidate, so long as that expenditure is not made at the suggestion of that candidate, directly or indirectly paid for by that candidate, or otherwise controlled by that candidate.

(2) An expenditure made by one group, other than a political party, on behalf of another group which is controlled by a candidate is considered a contribution and may not exceed the $1000 limitation set by AS 15.13.070(a).

(3) A candidate may not join his campaign committee with that of one or more candidates in order that they may file a single report of their joint campaign, nor may a group join with one or more groups in order that they may file a single report of their joint efforts.

(4) Candidates or groups prohibited from forming a joint campaign under (3) of this section may share in campaign efforts, under (5) of this section, so long as they keep separate campaign accounts and file separate statements of their contributions and expenditures under AS 15.13 and 2 AAC 50.

(5) Two or more candidates, or two or more groups, may share in campaign efforts so long as the cost of, and receipts from, shared efforts are allocated equally to each participating candidate or group's campaign.

(6) So long as the costs of, and receipts from, shared efforts are allocated equally to each participant of a shared campaign, neither the costs or receipts are considered as a contribution from one participant to any of the other participants.

(7) Each candidate or group filing reports pursuant to AS 15.13 and 2 AAC 50 must complete an APOC Form 15-3A, the "Shared Campaign Activities" form, which represents his or its proportionate share of the receipts and expenditures of a shared campaign effort.

(8) A proportionate share of the amount of an expenditure benefiting one or more candidates, or one or more groups, of a shared campaign effort, but paid for in full by one of the candidates, or by one of the groups, will be considered a contribution by

(A) the paying candidate to the other candidates; or

(B) the paying group to the other groups.

(9) Media communications regarding a shared campaign activity are considered properly identified so long as the identification includes the words "paid for by" and the name of each candidate or group sharing in the cost of the communications. The address and treasurer* of each participating candidate or group need not be listed. However, if a communication is paid for in its entirety by only one of the participants then, in accordance with 2 AAC 50.369, full and proper identification is required. (Eff. 7/22/78, Register 67; am 5/14/80, Register 74; am 6/29/84, Register 90)

Authority: AS 15.13.030(10) AS 15.13.070(a)
AS 15.13.040(a) and (b) AS 15.13.090

2 AAC 50.325. RECORDKEEPING REQUIREMENTS FOR NONMONETARY CONTRIBUTIONS. Repealed 1/4/86.

2 AAC 50.326. RECORDKEEPING REQUIREMENTS AND EXEMPTIONS WHEN REPORTING A FUND-RAISER. (a) A candidate or his treasurer, and the treasurer of a group, shall report all the contribution and expenditure activity related to a campaign fund-raiser in a format designated by the commission, and in accordance with this section. Fund-raisers sponsored in conjunction with several candidates or groups are viewed as shared fund-raising activities and, while subject to the provisions of this section, must be reported separately on APOC Form 15-3SA and in accordance with 2 AAC 50.324.

* has been changed to chairman in the statute.

(b) When reporting a fund-raiser, a candidate or his treasurer, and the treasurer of a group, shall state the total number of contributing participants, the date and place where the event was held, if applicable, a description of the type of fund-raising activity, and the total costs of, and receipts from, the event.

(c) For the purposes of this section, "fund-raiser" includes, but is not limited to, a garage sale; a raffle or drawing; an auction; a spaghetti feed or pot-luck dinner; the sale of campaign material, such as posters, buttons, stickers, clothing, key chains and ashtrays; or a sponsored concert.

(d) The requirement in AS 15.13.040 and 2 AAC 50.320 that a candidate or his treasurer, or the treasurer of a group, must record the name of every person making a contribution, regardless of the amount of that contribution, does not apply to events which meet the following criteria:

(1) fund-raisers, similar in nature to spaghetti feeds, bingo games, dances, or concerts, where

(A) there are 25 or more paying participants; and

(B) except as described in (f) of this section, the cash amount received from any one person does not exceed $50;

(2) fund-raisers, such as a raffle, lottery or a drawing, where

(A) 25 or more tickets are sold; and

(B) except as described in (f) of this section, the price of a ticket or the amount received from any one person purchasing chances does not exceed $50;

(3) fund-raisers, the income from which is based on the sale of campaign material, where, except as described in (g)

(A) the price of an item being sold does not exceed $10; or

(B) the amount received from any one person purchasing items does not exceed $50;

(4) fund-raisers, such as garage sales and auctions, where, except as described in (g)

(A) the fair market value of an item donated for sale or auction does not exceed $50; or

(B) the amount received from any one person purchasing items at the garage sale or auction does not exceed $50.

(e) When reporting receipts from a fund-raiser which meets the recording exemption set out in (d) of this section, the candidate or his treasurer, or

the treasurer of a group, need only report the total amount of contributions received from or generated by the fundraiser, along with the total number of paying participants, tickets sold, or items purchased, as applicable.

(f) If a person contributes in excess of the exempted amounts stated in (d)(1)(B) or (d)(2)(B) of this section, then the name of that person, and the amount and type of that contribution, must be recorded as set out in 2 AAC 50.320.

(g) If the cost of or value of an item exceeds the exempted amount, or if a person contributes or pays in excess of the exempted amounts stated in (d)(3) or (4), then the name of that contributor or buyer must be recorded as set out in 2 AAC 50.320.

(h) A contribution made by a person to attend or otherwise participate in a "fund-raiser," as defined in (c) of this section, whether or not exempted from full recording under this section, may not be received by or on behalf of a candidate in violation of AS 15.13.070(a). (Eff. 5/14/80, Register 74; am 5/24/81, Register 78; am 6/29/84, Register 90)

Authority: AS 15.13.030(10)
AS 15.13.040

2 AAC 50.330 REPORTING CAMPAIGN EXPENDITURES FOR TRANSPORTATION. Repealed 1/4/86.

2 AAC 50.332. REPORTING ZERO CONTRIBUTION OR EXPENDITURE ACTIVITY. (a) Each candidate or group required to file a full report of all contributions received and expenditures made in accordance with AS 15.13 and this chapter shall report in accordance with the reporting schedule set out in AS 15.13.110(a), regardless of the amount of their reportable contributions or expenditures. In the absence of any contribution or expenditure activity whatsoever during a reporting period, each candidate or group not already exempt from reporting under (b) or (c) of this section shall submit by the appropriate due date the "Short Form" on Schedule A of the Campaign Disclosure Statement certifying that no contributions have been received or expenditures made.

(b) A candidate who does not intend to receive or accept contributions, or make expenditures during his campaign for municipal or state public office, including any personal campaign contributions or expenditures, may file APOC Form 15-0, the "Campaign Reporting Exemption Form." A candidate who files the exemption form is not required to submit any other reports to the commission concerning his campaign. The reporting exemption is revoked if a candidate accepts contributions or spends money to influence his election. A candidate whose exemption is revoked must immediately register his change of status on APOC Form 15-1 and, in accordance with AS 15.13.110, must disclose his campaign contribution and expenditure activity beginning with the first campaign disclosure report due following his change in status. Failure to report campaign

contribution or expenditure activity after the reporting exemption is revoked subjects the candidate to both civil and criminal penalties for noncompliance with the reporting requirements of AS 15.13 and 2 AAC 50.

(c) The treasurer of a political party subdivision or political action committee previously registered with the commission which does not intend to receive or accept contributions, or make expenditures, during a municipal campaign may, in accordance with the requirements set forth in (b) of this section, file APOC Form 15-0. (Eff. 7/22/78, Reg. 67; am 5/14/80, Reg. 74)

Authority: AS 15.13.030(10) AS 15.13.110
AS 15.13.040(a) and (b)

2 AAC 50.333. REPORTABLE DATE OF A CONTRIBUTION. A contribution is considered received, and reportable as such, on the day in which that contribution is in the possession of a candidate, or a treasurer or deputy treasurer of a candidate or group, in accordance with AS 15.13.070(e) and this chapter. (Eff. 7/22/78, Reg. 67)

Authority: AS 15.13.030(10)
AS 15.13.070(e)

2 AAC 50.334. PERSONS WHO MAY ACCEPT CONTRIBUTIONS. (a) A candidate's campaign committee, or a group, may authorize a person who is not registered as a deputy treasurer to accept or solicit campaign contributions on its behalf for any single event. Campaign committees or groups are not in violation of AS 15.13.070(e) if contributions collected by the authorized person are turned over to a candidate, treasurer, or deputy treasurer of the intended committee or group within 72 hours.

(b) An individual who is, or will be, fund-raising on a regular basis throughout a political campaign must be registered as a deputy treasurer in accordance with AS 15.13.060(e).

(c) Individuals that have not been "authorized" to accept campaign contributions by either a candidate or his treasurer, or the treasurer of a group, are prohibited from collecting campaign contributions on behalf of a candidate's campaign committee or a group. (Eff. 4/28/79, Register 70; am 5/14/80, Register 74)

Authority: AS 15.13.030(10) AS 15.13.070(e)
AS 15.13.060 AS 15.13.130(2)

2 AAC 50.340. EXPENDITURES TO ADVERTISING AGENCIES OR CAMPAIGN MANAGEMENT SERVICES. Whenever a required report includes an expenditure to an advertising agency, or to an individual or business which provides campaign

consultation or management services, the report shall be accompanied by a statement* detailing all services rendered, including the identity of each business from which campaign goods or services were purchased or subcontracted, or media advertising placed, and their costs. (Eff. 5/16/76, Register 58; am 5/14/80, Register 74).

*Staff will request this information when clarification of a report is needed.

Authority: AS 15.13.030(10)
AS 15.13.040(f)

2 AAC 50.342. REGISTRATION OF GROUPS SUPPORTING OR OPPOSING BALLOT ISSUES. Each group, before making an expenditure in support of or in opposition to a ballot proposition, shall register with the commission on forms provided by the commission. (Eff. 5/14/80, Register 74)

Authority: AS 15.13.010(b)
AS 15.13.030(10)
AS 15.13.040(b)
AS 15.13.050

2 AAC 50.350. CONTRIBUTION OF PROFESSIONAL SERVICES. Repealed 1/4/86.

2 AAC 50.351. INDEPENDENT EXPENDITURES. (a) An independent expenditure is a disbursement of funds which is made expressly to support or oppose an individual's candidacy or a ballot issue. An independent expenditure is not made with the cooperation, consent, in consultation with, or at the request or suggestion of, a candidate, a candidate's campaign committee, or a group, and must be reported in accordance with AS 15.13.040(d)(2) and (e) by the maker of the expenditure.

(b) An expenditure made at the request of, in consultation with, or at the suggestion of a candidate, a candidate's campaign committee, or a group supporting or opposing a ballot issue, is considered an in-kind contribution by the person making the expenditure, and must be reported in accordance with AS 15.13.040(a) by the candidate or group benefiting from the contribution, and by the "contributor" in accordance with AS 15.13.040 (d)(1) and (e).

(c) There is no limit on the amount or frequency of independent expenditures.

(d) The report of an expenditure to influence the outcome of a ballot issue required to be filed under AS 15.13.040(d)(2) will be closed to the public only if the commission determines, in response to a written request, that the individual who makes the expenditure would likely be subject to undue harassment, threats, or economic reprisals as the result of public disclosure. After publication, the person granted an exemption shall provide the commission with

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

Authority: AS 15.13.030(10) AS 15.13.090
AS 15.13.040

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

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

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

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

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

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

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

(4) are in a parent-subsidiary relationship.

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

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

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

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

(c) The municipality shall file with the commission a list of candidates and their mailing addresses within seven days following the deadline for filing for municipal office.

(d) If a municipality seeks to influence the outcome of an election using funds contributed to it for that purpose, it shall register and report as a group under AS 15.13.040(b) and (c) and AS 15.13.050. (Eff. 5/16/76, Register 58; am 1/4/86, Register 97)

Authority: AS 15.13.010 AS 15.13.040 AS 15.13.090
AS 15.13.030(10) AS 15.13.050

2 AAC 50.361. REPORTING BY SPECIAL INTEREST GROUPS. Repealed 10/18/81.

2 AAC 50.362. DRAFT GROUPS. (a) A draft group must report its contribution and expenditure activity as a group, under the requirements of AS 15.13 and this chapter.

(b) A draft group

(1) may make expenditures in order to raise, through contributions to the group, the money necessary to

(A) defray its own administrative costs; and

(B) attempt to draft persons to become candidates, including the expenditure of money to

(i) extoll the qualities of persons the group is attempting to draft; and

(ii) inform the general public both of the group's position on issues, as well as the qualities of leadership it seeks in potential candidates; and

(2) may not

(A) engage in any political activity other than an activity described in (b)(1) and (c) of this section;

(B) accept contributions in excess of $1000 from any person or group;

(C) except for personal travel expenses, opinion surveys, or polls, make any expenditure that might benefit a person who the group has successfully drafted for office and who has made it known that he or she will be seeking election to public office; however, the group may continue in its attempts to draft other persons for elective office; and

(D) except as provided in (c) of this section, make contributions to, contribute previously produced material to, or expend funds or behalf of, any person who has declared that he or she is seeking office or who has filed a declaration of candidacy or nominating petition or become a candidate by any other means.

(c) A draft group that expends more than 50 percent of its funds in an effort to draft one individual or, in the case of gubernatorial and lieutenant gubernatorial candidates, a team of individuals, to campaign for public office is, for the purposes of AS 15.13.130(3) and this chapter, considered a controlled group. If the person or team subject to the draft formally declares for public office, then the amount contributed to the draft group must be added to any contributions made the same year to the drafted candidate's or team's own campaign committee, in order to determine whether a contributor has made the maximum allowable contribution as outlined in AS 15.13.070(a). As a controlled group, the draft group may contribute the maximum allowed by law to the candidate or team of candidates. (Eff. 7/22/78, Register 67; am 5/14/80, Register 74; am 6/29/84, Register 90)

Authority: AS 15.13.010 AS 15.13.040(b) AS 15.13.100
AS 15.13.030(10) AS 15.13.070(a) AS 15.13.130(2), (3) and (4)

2 AAC 50.363. SUBCOMMITTEES OF A CANDIDATE'S CAMPAIGN COMMITTEE OR OF A CONTROLLED GROUP. A subcommittee may be created within a candidate's campaign committee or within a controlled group. These subcommittees are not considered separate groups and shall not maintain separate bank accounts and records or file separate reports. The name of the candidate or controlled group must be a part of the name of the subcommittee. The name of the subcommittee shall not be used when identifying political advertising under AS 15.13.090 and 2 AAC 50.369. (Eff. 7/22/78, Register 67; am 5/14/80, Register 74)

Authority: AS 15.13.030(10) AS 15.13.040(a)
AS 15.13.050 AS 15.13.090

2 AAC 50.369. PROPER IDENTIFICATION OF POLITICAL COMMUNICATIONS. (a) Except as provided in (d) of this section, "proper identification" of a communication intended to influence the election of a candidate or the outcome of a ballot issue means that the communication is clearly identified with the words "paid for by," followed by the name and full address of the candidate, group, or individual actually paying for the advertising. The name of the campaign chairman must also be identified. If the candidate and the chairman are the same person, the name need not be repeated.

(b) Standard English abbreviations may be used in the written identification.

(c) "Clearly identified," as used in AS 15.13.090, means that

(1) in all printed communications, the proper identification must be visible, separate from the text of the advertisement itself, and large enough to be read by a person with average vision without the aid of corrective lenses;

(2) in all audio-visual communications, the proper identification must either

(A) be visual, and of sufficient size and duration to be read in full by the viewer; or

(B) be spoken, and played at the same audio level as the text of the communication itself; or

(C) be both visual and spoken, in accordance with (A) and (B) of this paragraph;

(3) in all audio communications, the proper identification must be spoken at the same audio level as the text of the communication itself.

(d) If the commission determines, under 2 AAC 50.351(d), that an expenditure report will not be made public, the political communication intended to influence the outcome of a ballot proposition or question is properly identified if, in place of the "paid for by" phrase, the communication includes, in the manner required by (c) of this section, the commission waiver identification number assigned by the Commission to that communication.

(e) In this section and in AS 15.13.090, "communications" include all material related to campaign fund-raisers, campaign letterhead, thank you notes, and press releases but does not include envelopes paid for by the campaign which are used solely to convey the campaign's properly identified communications. (Eff. 4/28/79, Register 70; am 10/19/81, Register 80; am 6/29/84, Register 90; am 1/4/86, Register 97)

Authority: AS 15.13.030(10)
AS 15.13.090

2 AAC 50.370. OBJECTS TOO SMALL TO CONTAIN THE PROPER IDENTIFICATION. If the size of an object used for a campaign advertisement is such that it is impractical to print the identification of the candidate, group, or person paying for the advertisement on the object, the advertisement must instead be identified in a regular expenditure report to the commission. Objects considered too small for full identification include pencils, pens, buttons, and other objects that are smaller than 3 1/2" x 5" in size. All media advertisements must be identified, regardless of size. (Eff. 5/16/76, Register 58; am 5/14/80, Register 74; am 1/4/86, Register 97)

Authority: AS 15.13.030(10)
AS 15.13.090

2 AAC 50.375. COMMUNICATIONS BY INCUMBENT ELECTED OFFICIALS. (a) A communication by an incumbent state elected official, who is also a declared candidate for elective office, with his constituency via a newsletter or other printed matter, or a paid radio or television spot, does not constitute a reportable campaign expense unless it specifically and expressly advocates the election or defeat of a candidate (including himself), or the passage or defeat of a ballot issue.

(b) A communication by an incumbent municipal elected officer who is also a declared candidate for elective office, with his constituency via a newsletter or other printed matter, or a paid radio or television spot, does not constitute a reportable campaign expense unless it specifically and expressly advocates the election or defeat of a candidate (including himself), or the passage or defeat of a ballot issue.

(c) The commission will, in its discretion, review a communication by an incumbent elected official when a question concerning whether or not the communication is a reportable campaign expense arises. (Eff. 7/22/78, Register 67)

Authority: AS 15.13.010 AS 15.13.045 AS 15.13.130(4)
AS 15.13.030(10) AS 15.13.090

2 AAC 50.380. EARLY CAMPAIGNING. (a) An individual wishing to campaign for municipal elective office shall comply with AS 15.13.100 by providing written notification to the commission of his or her candidacy only if the filing period has not yet opened. An individual wishing to campaign for state elective office shall comply with AS 15.13.100 by filing a declaration of candidacy with the lieutenant governor or a letter of intent with the commission.

(b) A letter of intent filed under (a) of this section is valid only for the next election or until it is withdrawn by the individual, whichever occurs first. A letter of intent must include a statement certifying that the individual will comply with the requirements of AS 15.13 although he or she has not satisfied the filing requirements as a candidate. A letter of intent need not include the specific seat for which the individual may file. (Eff. 5/16/76, Register 58; am 5/14/80, Register 74; am 1/4/86, Register 97)

Authority: AS 15.13.030(10)
AS 15.13.100

2 AAC 50.385. REPORTING BY ORGANIZATIONS AND BUSINESS OR TRADE ASSOCIATIONS. Repealed 1/4/86.

2 AAC 50.390. CIVIL PENALTY ASSESSMENTS FOR THE LATE FILING OF A CAMPAIGN DISCLOSURE REPORT. (a) A report required to be filed within the time required by AS 15.13.110(a) and (b) is delinquent if not received, in accordance with 2 AAC 50.310, on or before the due date.

(b) The report continues to be delinquent and subject to a civil penalty until received.

(c) Commission staff will send notice to each candidate or group of his or its delinquency under AS 15.13.110(a) within five working days after the due date of the report.

(d) Upon receipt of a delinquent campaign disclosure report of contributions received by a candidate or a group, commission staff will

(1) calculate the initial civil penalty, for each day of delinquency, as follows:

(A) $10 a day for each 30 day report or 10 day report;

(B) $10 a day for each year-end report received after January 16;

(C) $50 a day for each 7 day report; and

(D) $50 a day up to a maximum of $300 for each 24 hour report;

(2) send notice of the civil penalty assessed against the candidate or group within five working days after receipt of a delinquent report, or in the case of non-receipt of a report required by AS 15.13.110(b), within 15 working days after receiving the information, and include

(A) a statement of the amount of the assessment; and

(B) an affidavit appeal form.

(e) A candidate or group subject to a civil penalty assessment may

(1) submit, within 30 days after receipt of the assessment notice described in (d)(2) of this section, an affidavit stating reasons for the late filing to show why a civil penalty should not be assessed; an affidavit

(A) is a statement in writing made under oath and upon penalty of perjury; and

(B) must be sworn to before a notary public, municipal clerk, court clerk, postmaster, or any other person authorized to administer oaths or, if none of the preceeding alternatives is available, may be signed by the official without benefit of the oath so long as the official states, in writing, that the affidavit is signed under penalty of perjury; or

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

(f) If a candidate or group subject to a civil penalty assessment for the late filing of a campaign disclosure report refuses, or fails, within the time

required, to submit an affidavit or make payment, then commission staff will refer the matter to the attorney general for appropriate action. The commission will not hear an appeal if an affidavit is not filed within the time required.

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

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

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

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

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

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

Authority: AS 15.13.010 AS 15.13.125
AS 15.13.030(10)

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

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

Authority: AS 15.13.030(10)

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

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

(1) give the money to charity;

(2) repay his contributors;

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

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

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

(6) contribute the money to another candidate or a group controlled by a candidate, not to exceed the $1000 limitation, or to a political party or group supporting a ballot proposition or question; or

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

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

(1) give the money to charity; or

(2) repay its contributors; or

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

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

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

Authority: AS 15.13.030(10)

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

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

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

(d) A debt arising from a prior campaign includes

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

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

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

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

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

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

(1) "business entity" means a sole proprietorship, partnership, corporation or professional corporation, company, firm, business trust, or any other business entity or a combination of these;

(2) "draft group" means a group of two or more persons organized for the purpose of drafting one or more individuals to run for elective office by becoming a candidate as defined in AS 15.13.130(1);

(3) "labor organization" means a local, national, or international union, or labor council, or any other labor organization recognized under state or federal laws;

(4) "contribution" — Repealed 1/4/86. (Eff. 7/22/78, Register 67; am 6/29/84, Register 90; am 1/4/86, Register 97)

Authority: AS 15.13.030(10)
AS 15.13.130

2 AAC 50.450. COMPLAINTS. (a) A complaint filed with the commission must be in writing and must contain the following:

(1) the full name and mailing address of the person making the complaint;

(2) the name of the person or group alleged to be in violation;

(3) allegations of specific facts which, if true, would constitute

(A) a violation of AS 15.13 or of a provision of 2 AAC 50.310 - 2 AAC 50.405;

(B) a violation of AS 24.45 or of a provision of 2 AAC 50.505 - 2 AAC 50.545;

(C) a violation of AS 39.50 or of a provision of 2 AAC 50.010 - 2 AAC 50.200;

(4) the basis of the complainant's knowledge of the alleged facts, differentiating between statements made upon personal knowledge and those made upon other sources of information and belief;

(5) any documentation, relevant to the facts alleged, which is available to the complainant.

(b) The complaint shall be signed by the complainant and the signature shall be verified by a notary public, municipal clerk, court clerk, postmaster, or any person authorized to administer oaths. Notarial service will be provided by the commission without cost.

(c) Upon receipt of a complaint properly filed and sworn, the commission staff shall promptly

(1) acknowledge receipt to the complainant; and

(2) determine whether the complaint sets out facts which, if true, would constitute a violation of law.

(d) If the staff determines that a complaint does not set out facts which, if true, would constitute a violation of the law, it shall promptly inform the complainant, inform the respondent, and close the file. Following a determination under this subsection,

(1) the staff, upon request of the respondent, shall furnish a copy of all of the information in its file on the complaint to the respondent;

(2) the complainant may request that the commission review the staff's determination; the review will be conducted in closed session; following the review, the commission will, by majority vote

(A) uphold the staff's determination and close the matter; or

(B) determine that the complaint is sufficient on its face, and it will be handled under (e) of this section.

(e) If the staff or the commission under (d)(2)(B) of this section determines that a complaint sets out facts which, if true, would constitute a violation of the law, the staff will

(1) notify the complainant;

(2) notify the respondent, providing a copy of the complaint, any accompanying documents, and a copy of the commission's investigative and hearing procedures;

(3) inform the commission that a complaint has been filed, providing a copy of the complaint and any accompanying documents; and

(4) begin a preliminary investigation.

(f) A person against whom a complaint is filed may file an answer. The answer must

(1) specifically admit or deny all material allegations of the complaint;

(2) state any defenses expected to be raised by the respondent;

(3) include any relevant documentation in the possession of the respondent; and

(4) be a signed and sworn statement. (Eff. 5/16/76, Register 58; am 12/29/77, Register 64; am 6/29/84, Register 90; am 1/4/86, Register 97)

Authority: AS 15.13.030(8) AS 15.13.045 AS 24.45.021(b)
AS 15.13.030(10) AS 15.13.120(d) AS 24.45.131
AS 39.50.050(b)

2 AAC 50.460. PRELIMINARY INVESTIGATION. (a) The commission staff shall undertake a preliminary investigation if

(1) a properly filed and sworn complaint has been found to be sufficient; or

(2) information has been obtained by the commission or staff in the normal course of business which, if true, would constitute a violation of the law.

(b) When the staff initiates an investigation based on (a)(2) of this section, it shall set out in writing the facts, information, and law involved, along with documentation, and process this material in accordance with 2 AAC 50.450(e).

(c) In conducting a preliminary investigation, the staff may use any of the methods set out in AS 15.13.045. It may also

(1) request written and sworn statements from any party, witness, or other person which are relevant to the investigation; and

(2) use the services of the Alaska State Troopers or private investigators to secure factual information pertinent to the investigation.

(d) Upon completion of a preliminary investigation, the staff shall provide a written summary of the investigation to the commission at the next regularly scheduled meeting, or at a special meeting. The summary must include a staff recommendation for dismissal, for continued investigation, that the matter be addressed in a hearing, or that civil penalties be assessed subject to appeal as provided in 2 AAC 50.110(e), 2 AAC 50.135(f), 2 AAC 50.390(e), or 2 AAC 50.507(e). Notice of the meeting and a copy of the summary must be provided to the respondent and complainant in advance of the meeting. The decision of the commission with respect to the findings of the preliminary investigation will be sent by certified mail to the complainant and respondent. (Eff. 5/16/76, Register 58; am 12/29/77, Register 64; am 6/29/84, Register 90; am 1/4/86, Register 97)

Authority: AS 15.13.030(8); AS 15.13.030(10); AS 15.13.045(a); AS 15.13.120(d)
AS 18.65.090; AS 24.45.021(b); AS 24.45.131; AS 39.50.050(b)