



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Administration

ALASKA PUBLIC OFFICES COMMISSION

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March 14, 2018

VIA U.S. MAIL and EMAIL

University of Alaska
Attn: Andy Harrington, Associate General Counsel
P.O. Box 755160
Fairbanks, Alaska 99775-5160
arharrington2@alaska.edu

Re: Advisory Opinion Request AO 18-03-CD

Dear Mr. Harrington:

Please find the attached advisory opinion regarding your March 7, 2018 request for guidance related to a post-election waiver of a payback requirement incurred by a professor who is elected to the Alaska State Legislature. The conclusion of this opinion has not yet been submitted for approval by the Alaska Public Offices Commission. AS 15.13.374. Only the Commission has the authority to approve an advisory opinion under 2 AAC 50.840. The Commission will rule on staff's proposed advice at its next regular meeting, currently scheduled for June 13-14, 2018.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

A handwritten signature in purple ink that reads "Thomas R. Lucas".

Thomas R. Lucas
Campaign Disclosure Coordinator

cc: APOC Commission Members
Heather Hebdon, Executive Director
Mary Lynn Macsalka, Assistant Attorney General

Encl: Unapproved Advisory Opinion AO 18-03-CD

ADVISORY OPINION REQUEST

Number: AO 18-03-CD
Requested By: University of Alaska
Prepared By: *TRL* Thomas R. Lucas, Campaign Disclosure Coordinator
Date Issued March 14, 2018
Subject: Does the University of Alaska incur reporting requirements under, or violate any provision of, AS 15.13 if it waives a payback requirement of a faculty member elected to the Alaska State Legislature?

Commission Decision:

I. BACKGROUND

This Advisory Opinion addresses post-election action of the University of Alaska (University) in connection with a faculty member who is elected to the Alaska State Legislature. Staff has not been asked to express an opinion concerning election related activity of the faculty member or the University during the election.¹

The University allows faculty with at least five consecutive years of University service to request sabbatical leave for study, formal education, research, and other scholarly and creative activity, generally at a reduced salary.² Among the conditions attached to this policy is the recipient is obligated to return to the University for further service of at least one appointment period which is typically an academic year.³ Failure of the recipient to fulfill this obligation requires the full and immediate repayment of salary and benefits received from the University while on leave, except in extenuating circumstances acceptable to the chancellor.⁴

University employees are allowed to run for public office without resigning from their University positions.⁵ If a University employee wins the election, resignation may become necessary before taking the office, depending on the office.⁶ Municipal council/assembly seats typically would not require resignation.⁷ Winning a state legislative seat, on the other hand, precludes simultaneous University employment under the “dual office” clause of the Alaska constitution.⁸

¹ Exhibit 1, Advisory Opinion Request.

² Ibid..

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Alaska Constitution Art. 2, sec. 5. See *Begich v. Jefferson*, 441 P.2d 27 (1968).

II. QUESTIONS PRESENTED

If the University found extenuating circumstances and waived the sabbatical payback requirement of a professor who won election to the Alaska Legislature:

1. Would the University violate AS 15.13.145 prohibiting the University from using its money or assets to influence the results of a candidate election?
2. Would the University incur any reporting requirements under 2 AAC 50 356(c)?
3. Would the value of the waiver be considered a contribution as that term is defined in AS 15.13.400(4)?

III. SHORT ANSWERS

1. No.
2. No.
3. No.

IV. FACTS

A University faculty member currently on sabbatical is considering running for the Alaska Legislature.⁹ If the faculty member wins the election, resignation from the University will be constitutionally required because of the “dual appointment” clause of the Alaska Constitution.¹⁰

The faculty member will not have completed the post-sabbatical appointment period at the time constitutionally required to resign.¹¹ Resigning prior to completion of the post-sabbatical appointment period would normally require immediate repayment of salary and benefits received while on sabbatical except in extenuating circumstances acceptable to the chancellor.¹²

V. LAW AND ANALYSIS

The crux of the questions presented in this request for opinion is whether AS 15.13 and the regulations promulgated thereunder, are in any way implicated if the University finds that a constitutionally forced resignation is an extenuating circumstance justifying the waiver of a faculty member’s sabbatical payback obligation when elected to the Alaska Legislature before completing a post-sabbatical appointment period.

⁹ Exhibit 1.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

In analyzing this request, staff recognizes that, if elected, a faculty member might receive a substantial post-election financial benefit from a waiver; and, might take that possibility into consideration when deciding whether or not to run for elective office. Nevertheless, staff concludes that neither AS 15.13 nor the regulations promulgated thereunder are implicated herein because the reach of AS 15.13 is limited to activities intended to influence the results of an election.

In general, unless otherwise provided, AS 15.13 is applicable “...to contributions, expenditures, and communications made for the purpose of influencing the outcome of a ballot proposition or question as well as *those made to influence the nomination or election of a candidate*” (emphasis added).¹³

This general limitation on the applicability of AS 15.13 is reflected throughout the statute and in particular in the statutory sections and the regulation specifically addressed in the Request for Advisory Opinion.

The University specifically requests guidance on whether granting a post-election exemption would violate AS 15.13.145(a). But, this statutory provision, consistent with the general applicability of AS 15.13, only applies to money used to influence the outcome of a candidate election.¹⁴ Here, the exemption is not made until the election is over; and is only a possibility if the faculty member has already won the election. Under these circumstances, staff concludes that granting the post-election exemption is not a use of the University’s money to influence the outcome of a candidate election.

The University also seeks guidance concerning the reporting requirement found in 2 AAC 50.356(c). Under that regulation, the University would be required to report the use of its money if it made an “election-related expenditure”.¹⁵ In turn, and as it relates to the issues presented herein, the term “expenditure” is defined as a purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of influencing the nomination or election of a candidate.¹⁶ As above, in this case, the exemption is not made until the election is over; and is only a possibility if the faculty member has already won the election. Under these circumstances staff concludes that granting the post-election exemption does not trigger a reporting requirement under 2 AAC 50.365(c).

The University also asks if the grant of an exemption could be considered a reportable contribution. The term “contribution” is broadly defined and includes the forgiveness of debt;¹⁷ but, as it relates to this case, only if the forgiveness of debt is made

¹³ AS 15.13.010(b).

¹⁴ AS 15.13.145(a).

¹⁵ 2 AAC 50.356(c).

¹⁶ AS 15.13.400(6)(A)(i).

¹⁷ AS 15.13.400(4)(A); 2 AAC 50.990(7)(B)(i).

for the purpose of influencing the nomination or election of a candidate.¹⁸ Here, the exemption is not made until the election is over; and is only a possibility if the faculty member has already won the election. Under these circumstances, staff concludes that granting the post-election exemption is not a reportable contribution.

VI. CONCLUSION


Because the reach of AS 15.13 is limited to activities intended to influence the results of an election, staff concludes that neither AS 15.13 nor the regulations promulgated thereunder would be implicated if the University granted a post-election sabbatical payback exemption if a faculty member is elected the the Alaska Legislature.

VII. COMMISSION DECISION

Only the Commission has the authority to approve an advisory opinion. 2 AAC 50.840. The Commission will rule on staff's proposed advice at its next regular meeting. The Commission may approve, disapprove, or modify the proposed advice. An advisory opinion must be approved by an affirmative vote of at least four members or it will be considered disapproved. Both staff's proposed advice and the Commission's final advisory opinion apply only to the specific facts and activity for which advice was requested.

If you rely on staff's proposed advisory opinion in good faith and the Commission subsequently rejects the proposed advice, staff will take no enforcement action on your activities up to that point if you acted under the specific facts described. If you have any additional questions or would like to discuss this proposed advice, please contact me at (907) 276-4176.

I hereby certify that on this date, I caused a true and correct copy of the foregoing to be delivered to:	
University of Alaska Andy Harrington Associate General Counsel P.O. Box 755160 Fairbanks, Alaska 99775-5160 arharrington2@alaska.edu	<input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email


Law Office Assistant I

3-14-2018

Date

¹⁸ AS 15.13.400(4)(A)(i).

APPLICABLE LAW

ALASKA CONSTITUTION

Article 2, Section 5. Disqualifications

No legislator may hold any other office or position of profit under the United States or the State. During the term for which elected and for one year thereafter, no legislator may be nominated, elected, or appointed to any other office or position of profit which has been created, or the salary or emoluments of which have been increased, while he was a member. This section shall not prevent any person from seeking or holding the office of governor, secretary of state, or member of Congress. This section shall not apply to employment by or election to a constitutional convention.

ALASKA STATUTES

AS 15.13.010 Applicability

(b) Except as otherwise provided, this chapter applies to contributions, expenditures, and communications made for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate.

AS 15.13.145 Money of the state and its political subdivisions

(a) Except as provided in (b) and (c) of this section, each of the following may not use money held by the entity to influence the outcome of the election of a candidate to a state or municipal office:

- (1) the state, its agencies, and its corporations;
- (2) the University of Alaska and its Board of Regents;
- (3) municipalities, school districts, and regional educational attendance areas, or another political subdivision of the state; and
- (4) an officer or employee of an entity identified in (1) - (3) of this subsection.

(b) Money held by an entity identified in (a)(1) - (3) of this section may be used to influence the outcome of an election concerning a ballot proposition or question, but only if the funds have been specifically appropriated for that purpose by a state law or a municipal ordinance.

(c) Money held by an entity identified in (a)(1) - (3) of this section may be used

(1) to disseminate information about the time and place of an election and to hold an election;

(2) to provide the public with nonpartisan information about a ballot proposition or question or about all the candidates seeking election to a particular public office.

AS 15.13.400 Definitions

(4) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made, and includes the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that is rendered to the candidate or political party, and that is made for the purpose of

(i) influencing the nomination or election of a candidate;

(6) "expenditure"

(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

ALASKA ADMINISTRATIVE CODE

2 AAC 50.356 Election-related use of public money

(c) If an entity listed in AS 15.13.145(a)(1) - (3), or an officer or employee of the entity, uses budgeted money of the entity to make an election-related expenditure other than a communication of information allowed under AS 15.13.145(c), the entity shall disclose the expenditure, and report the information required in AS 15.13.040(e). If a municipality seeks to influence the outcome of an election using public money for that purpose, it shall register and report the information required under AS 15.13.040(b) and (c).

2 AAC 50.990 Definitions

(7) "contribution"

(B) includes

(i) a subscription, advance, transfer, forgiveness of all or part of a debt, relaxation of credit, or anything of value made for or provided to a candidate or campaign by a person, group, or nongroup entity for the purpose set out in AS 15.13.400(4)(A); and