

ADVISORY OPINION REQUEST

Number: AO 19-03-CD
Requested By: Alaska Cabaret, Hotel, Restaurant, and Retailers Association
Prepared By: Heather R, Hebdon, Executive Director
Date Issued January 31, 2019
Subject: Reporting requirements for public opinion poll
Commission Decision: On April 19, 2019, the Alaska Public Offices Commission heard and approved the advisory opinion, with modifications reflected in this version, by a vote of 4 to 0.

I. QUESTION PRESENTED

Does the expense of an opinion poll procured to inform whether to, or how, Alaska Cabaret, Hotel, Restaurant, and Retailers Association (“Alaska CHARR”) will engage in future activities to influence the 2019 Anchorage municipal election trigger reporting requirements?¹

II. SHORT ANSWER

Generally, no. If an opinion poll is purchased for purposes other than to influence the outcome of an election, and the polling information is not used to influence the outcome of an election, it does not trigger a registration or reporting requirement.

III. FACTS

Alaska CHARR is a non-profit corporation dedicated to serving the needs of Alaska’s hospitality industry.² It provides training programs, membership services, legislative and government relations, informational services, and promotes the industry for its members.³

In December 2018, the Anchorage Municipal Assembly passed Ordinance 2018-104, declaring that a proposition be placed on the ballot and submitted to qualified voters in the April 2, 2019, election.⁴ If passed, the proposition would amend the Municipal Charter to authorize a retail sales tax on alcoholic beverages and dedicate the revenue collected for health and public safety purposes.⁵

¹ Exhibit 1, Advisory Opinion Request.

² Exhibit 2, Mission Statement (<https://www.alaskacharr.com>).

³ *Id.*

⁴ Exhibit 3, MOA Website, Items of Interest re Ordinance Regarding a Ballot Proposition-Retail Sales Tax on Alcoholic Beverages (<http://www.muni.org/Departments/Assembly/Pages/default.aspx>).

⁵ *Id.*

Alaska CHARR is considering whether to expend resources to influence the outcome of the ballot proposition and, to aid in its decision-making, commissioned an opinion poll to ascertain the public’s view of the proposition.⁶ Because Alaska CHARR’s request did not provide the content of the opinion poll or any details about how it was conducted, whether by phone, mass mailing, or other means, it is unclear whether the poll expressed support for or opposition to the ballot proposition, or otherwise sought to influence the outcome of the ballot proposition. Therefore, for purposes of this advisory opinion, staff assumes the poll did not express support for or against the ballot proposition.

IV. LAW AND ANALYSIS

Alaska’s Campaign Disclosure Laws apply to contributions, expenditures, and communications made for the purpose of influencing a ballot proposition.⁷ This includes independent expenditures made by persons, such as Alaska CHARR. An expenditure includes a purchase, payment, or transfer of anything of value that is made for the purpose of influencing the outcome of a ballot proposition.⁸ Polling information is specifically included in the definition of “anything of value” under APOC’s regulations.⁹ Persons who engage in independent expenditures supporting or opposing a ballot proposition must register prior to making an expenditure and must also report such expenditures.¹⁰

Purchasing polling information for the purpose of influencing the outcome of a ballot proposition is an expenditure by definition. On the other hand, a purchase of polling information for any purpose other than influencing the outcome of a ballot proposition is not generally regulated under AS 15.13.¹¹ Alaska CHARR states it purchased the poll—and the resulting polling information—to inform itself in making its decision *whether* to take action and expend resources to influence the outcome of the ballot proposition. This presents a close call. Based on the specific facts presented in its request, and assuming the poll did not express support for or opposition to the ballot proposition, Alaska CHARR’s purchase of the opinion poll is not an expenditure that requires registration and reporting because it was not purchased for the purpose of influencing the outcome of the ballot proposition.

⁶ Ex. 1.

⁷ AS 15.13.010(b).

⁸ AS 15.13.400(6)(A)(iv).

⁹ 2 AAC 50.990(2)(C).

¹⁰ AS 15.13.050(a) and AS 15.13.140

¹¹ *But, see*, AS 15.13.100, which provides a limited exception to registration and reporting for specific types of “expenditures”, including “opinion surveys or polls,” made by a person or in coordination with a person before that person files for nomination for office. This section indicates that an opinion poll or survey is an expenditure, and provides that a prospective candidate does not have to register before commissioning an opinion survey or poll, and does not have to report the expenditure for the survey or poll, before the prospective candidate files for office. However, as soon as the prospective candidate files for office, the survey or poll expenditure must be reported on the candidate’s first report.

Staff's conclusion comes with two significant caveats, however. First, should Alaska CHARR choose to engage in activities intended to influence the outcome of the ballot proposition based on the results of the poll, or if it uses the data obtained through the poll to guide its efforts, to formulate its strategy, to target specific voters, or in any other way that would influence the outcome of the ballot proposition, then the poll should be reported. Second, staff's conclusion is specific to Alaska CHARR's advisory opinion request. Whether the purchase of a poll or survey related to a ballot proposition requires the purchaser to register in advance and whether the purchase is reportable as an expenditure or contribution will depend on the specific facts and circumstances surrounding the specific poll or survey.

V. CONCLUSION

Provided the poll did not express support for or opposition to the ballot proposition, Alaska CHARR's purchase of the opinion poll is not an expenditure that requires registration and reporting because the poll was not purchased for the purpose of influencing the outcome of the ballot proposition. However, if Alaska CHARR uses the polling information to influence the outcome of the ballot proposition, it must be reported.


This opinion is based on the limited facts provided, which did not include the content of the opinion poll or any details about how it was conducted. Alaska CHARR ultimately registered and reported the expense associated with this opinion poll.

VI. COMMISSION DECISION

On April 19, 2019, the Alaska Public Offices Commission heard and approved the advisory opinion, with modifications reflected in this version, by a vote of 4 to 0.

I hereby certify that on this date, I caused a true and correct copy of the foregoing to be delivered as indicated to the following:	
Jack McKenna Birch Horton Bittner & Cherot 510 L Street Anchorage, AK 99501 jmckenna@BHB.com	<input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> Certified Mail

9171-9690-0935-0217-6169-47



Law Office Assistant

4/29/2019

Date

Hebdon, Heather R (DOA)

From: Jack McKenna <jmckenna@BHB.com>
Sent: Thursday, January 24, 2019 11:31 AM
To: Hebdon, Heather R (DOA)
Cc: Lucas, Tom R (DOA)
Subject: Advisory Opinion Request

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms. Hebdon:

I am attorney representing the Alaska Cabaret, Hotel, Restaurant, and Retailers Association ("Alaska CHARR"). Alaska CHARR is considering whether to expend resources to influence an upcoming election in the Municipality of Anchorage. In order to aid in Alaska CHARR's decision-making, it commissioned a poll to ascertain the public's views on the topic at issue. This information would then inform Alaska CHARR's decision on whether to take action in relation to the election. I note that in AO 09-01-CD, the Commission advised an elected official that the expenditure related to a poll would only need to be reported if the official decided to run for office. Alaska CHARR requests an advisory opinion from the Commission as to whether the expense of a poll used to inform whether, and potentially how, Alaska CHARR will engage in future activities to influence the outcome of an election need to be reported.

Out of an abundance of caution, Alaska CHARR will register and report the expenditure related to the poll. However, the advice requested will inform any actions that Alaska CHARR might undertake in the lead-up to the election.

Please do not hesitate to contact me if you have any questions.

Regards,

Jack McKenna

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Mission Statement

The Alaska Cabaret, Hotel, Restaurant and Retailers Association is a non-profit corporation, dedicated to serving the needs of the hospitality industry in the state of Alaska. The Association provides training programs, membership services, legislative and government relations, informational services, and promotes the industry for its members.





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Items of Interest

Ordinance prohibiting Plastic Shopping Bags - *Delay in Effective Date!*

AO 2018-110, As Amended, an ordinance of the Anchorage Municipal Assembly amending Anchorage Municipal Code Chapter 15.95, Disposable Plastic Shopping Bags, to delay the date the prohibition on distribution goes into effect, to add and clarify exceptions, to clarify terminology and include conforming amendments, and amending the corresponding language in AMC Section 14.60.030 accordingly. - *Approved as amended at the Regular Assembly Meeting of December 18, 2018.*

AO 2018-63(S), As Amended, an ordinance of the Anchorage Assembly amending the Anchorage Municipal Code to add a new chapter to prohibit certain retail sellers from distributing disposable plastic shopping bags and providing for civil fines.- *Approved as amended at the Regular Assembly Meeting of August 28, 2018. A motion for reconsideration of AO 2018-63(S), As Amended failed at the Regular Assembly Meeting of September 11, 2018.*

Application for Anchorage Assembly Internship Program

The Anchorage Assembly has partnered with APU and UAA to offer an internship program for college students to intern under Assembly Members while the students receive course credits. This is an opportunity for students to build professional connections, work on real policy, and learn more about local issues. If you know of any college students enrolled at APU or UAA currently who are interested in interning for the Anchorage Assembly this 2019 spring semester, please encourage them to [apply through this link!](#) The deadline to apply is January 25th.

Ordinance designating Deteriorated Areas including the Fourth Avenue Theatre

AO 2015-49, As Amended and Corrected, an ordinance designating as deteriorated areas the Fourth Avenue Theatre, Reed Building and adjacent real property located in the Downtown business district, and the Northern Lights Inn and adjacent real property located in Midtown; setting the deteriorated area boundaries pursuant to Anchorage Municipal Code Section 12.35.005; providing landfill fee waivers or discounts for disposal of the Northern Lights Inn improvements; and providing that information filed under AMC Subsection 12.35.010A.6 related to the aforementioned properties shall be deemed proprietary under AMC Section 3.90.040G. - *Approved as amended at the Regular Assembly Meeting of May 14, 2015. Immediate Reconsideration failed on May 14, 2015. Document corrected on September 24, 2015.*

Ordinance regarding a Ballot Proposition - Retail Sales Tax on Alcoholic Beverages

AO 2018-104, an ordinance of the Anchorage Assembly submitting to the qualified voters of the Municipality of Anchorage a ballot proposition amending the Anchorage Municipal Charter to authorize a retail sales tax on alcoholic beverages and dedicating the net receipts revenue to health and public safety purposes, including financing support for such purposes; authorizing the Assembly to implement and levy the tax by ordinance; and related matters,

- For **ALL** [Public Notices](#)
- Upcoming Assembly Events [Calendar](#)
- 2019 Regular Assembly Meeting [Schedule](#)
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- **New Municipal Code of Ethics** and Board of Ethics [Webpage](#)
- [Anchorage Municipal Code](#)
- [Free Prescription Discount Card](#)
- [State of Alaska](#)
- Application for [Anchorage Assembly Internship Program](#).

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Mayor Berkowitz, Assembly Vice-Chair Croft, Assembly Member Traini, and Assembly Member Rivera. - *Approved as amended at the Continued Regular Assembly Meeting of December 18, 2018.*

Assembly Legislation regarding the Sale of Municipal Light & Power to Chugach Electric Association, Inc.

[AO 2018-1\(S\)](#), an ordinance submitting to the qualified voters of the Municipality of Anchorage a Charter amendment permitting Municipal Light & Power to be sold to Chugach Electric Association, Inc. and authorizing disposal of the proceeds of sale. - *Approved at the Regular Assembly Meeting of January 23, 2018.*

- [Utility Disposition Consultant's Report](#) to the Assembly, 12/3/2018
- [Presentation](#) given at the Assembly Utility and Enterprise Oversight Committee Meeting on Friday, September 28, 2018.
- [Asset Purchase Agreement](#)
- [Chugach Resolution](#) re Asset Purchase Agreement
- [Payment in Lieu of Taxes Agreement](#)
- [Eklutna Power Purchase Agreement](#)
- [BRU Fuel Agreement](#)
- [Assembly APA Review Presentation](#) given by Municipal Legal.

[AR 2017-235](#), a resolution of the Anchorage Assembly urging the Municipality of Anchorage, Municipal Light & Power, and Chugach Electric Association to begin substantive steps to explore merger opportunities. - *Approved at the Regular Assembly Meeting of June 13, 2017.*

Ordinance regarding Stream, Water Body, and Wetland Protection

[AO 2018-67\(S-1\), As Amended](#), a proposed ordinance of the Anchorage Assembly repealing and reenacting Anchorage Municipal Code (AMC) Subsection 21.07.020B. to update provisions regarding watercourse, water body, and wetland protection; amending AMC Chapters 21.02 and 21.03 to transfer variance authority for variances from watercourse, water body, and wetland protection regulations to the Zoning Board of Examiners and Appeals; adding a new section to AMC Chapter 21.12 regarding nonconformities with said protections; and amending AMC 21.14.040, definitions, accordingly. - *Approved as amended at the Regular Assembly Meeting of October 9, 2018.*

Ordinance regarding Acquisition of Real Property for Solid Waste Services

[AO 2018-75](#), an ordinance authorizing acquisition of real property located south of East 36th Avenue and west of Homer Drive, legally described as Lots 1 and 2 Block 1 Fyfe Subdivision (Plat 72-57); East and West portions of SW4 SW4 SE4 SW4 SW4 SEC 32 T13N R3W; Parcel 1-21 N2 NE4 SW4 SW4 portion within SEC 32 T13N R3W; and Parcel 1-22 S2 NE4 SW4 SW4, N2 SE4 SW4 SW4 portion within SEC 32 T13N R3W (PID 009-281-70; 009-281-71; 009-284-09; 009-284-10; 009-284-01; 009-284-02), for a purchase price, including related expenses, in an amount Not To Exceed \$17,000,000; appropriating the proceeds of Solid Waste Utility Revenue Notes and or bonds (Collection and Disposal); appropriating proceeds from the notes and or bonds in an amount Not To Exceed \$17,000,000, split between the Solid Waste Disposal Services (SWS) Fund (562000) in the amount of \$10,200,000 and the Solid Waste Collection Services Fund (560000) in the amount of \$6,800,000; and further appropriating the proceeds of the notes and/or bonds as a contribution to the SWS Capital Improvement Project Funds (562200) and (560200) respectively, and revising both Solid Waste Services' 2018 Capital Improvement Budget and Solid Waste Services' 2018-2013 Capital Improvement Plan. - *Approved at the Regular Assembly Meeting of October 23, 2018.*

Resolution regarding Efforts to Daylight Fish Creek

[AR 2018-277, As Amended](#), a resolution of the Anchorage Municipal Assembly supporting efforts to daylight Fish Creek, also known by the Dena'ina people as Ch'at'anal Tsegh Liq'aka Betnu, and encouraging the ongoing and future projects to restore, protect, and enhance daylighting of Fish Creek. - *Approved as amended at the Regular Assembly Meeting of September 25, 2018.*

Ordinance regarding Community Workforce Agreement Requirement

[AO 2018-74, As Amended](#), an ordinance of the Anchorage Municipal Assembly amending Anchorage Municipal Code Title 7, Purchasing, Contracts and