

**BEFORE THE ALASKA PUBLIC OFFICES COMMISSION**

In Re: Request for )  
Advisory Opinion by )  
Alaska Center Independent Expenditure ) **AO No. 21-01-CD**  
\_\_\_\_\_ )

**FINAL ORDER APPROVING ADVISORY OPINION**

Alaska Center Independent Expenditure sought an advisory opinion from the Alaska Public Offices Commission on the effective date of the new campaign disclosure provisions enacted under Ballot Measure 2. The Commission considered staff's draft advisory opinion, dated February 11, 2021, at its regular meeting on June 9, 2021, and approves the opinion in its entirety.<sup>1</sup>

The approved advisory opinion is attached to this order. This is a final Commission decision and may be appealed to the superior court within 30 days.<sup>2</sup>

Dated: June 21, 2021.

**BY ORDER OF THE ALASKA PUBLIC OFFICES COMMISSION<sup>3</sup>**

**Certificate of Service:**

I hereby certify that on this date, I served, by **certified mail and email** a true and correct copy of the foregoing in this proceeding on the following:

Jenny-Marie Stryker  
The Alaska Center IE  
311 W. 22<sup>nd</sup> Avenue, Unit C  
Anchorage, AK 99503  
[jennymarie@akcenter.org](mailto:jennymarie@akcenter.org)

and by **email** to:  
Heather Hebdon  
Executive Director  
Alaska Public Offices Commission  
[heather.hebdon@alaska.gov](mailto:heather.hebdon@alaska.gov)

  
Paralegal

6.21.21  
Date

<sup>1</sup> See AS 15.13.374, 2 AAC 50.826.

<sup>2</sup> AS 44.62.560, 2 AAC 50.826(c)(3), Alaska R. App. P. 602.

<sup>3</sup> Commissioners Anne Helzer, Richard Stillie, Suzanne Hancock, Dan LaSota, and Van Lawrence participated in this matter. The decision was made on a 5-0 vote.

## ADVISORY OPINION REQUEST

**Number:** AO 21-01-CD  
**Requested By:** Jenny-Marie Stryker on behalf of the  
Alaska Center Independent Expenditure (“AKC IE”)  
**Prepared By:** Heather Hebdon, Executive Director  
**Date Issued:** February 11, 2021  
**Subject:** Application of new provisions enacted under Ballot Measure 2 (“BM2”)<sup>1</sup>  
**Commission Decision:** On June 9, 2021, the Alaska Public Offices Commission heard and approved this advisory opinion by a vote of 5-0.

### I. BACKGROUND

In November 2020, BM2 appeared on the state’s general election ballot.<sup>2</sup> The measure, among other things, sought to prohibit the use of “dark money” in Alaska’s candidate elections.<sup>3</sup> A majority of votes cast favored the adoption of BM2 and the election results were certified on November 30, 2020.<sup>4</sup> Therefore, provisions of BM2 become effective on February 28, 2021.<sup>5</sup>

The Municipality of Anchorage (“MOA”) will hold a regular election on April 6, 2021, where voters will, among other offices, elect a mayor.<sup>6</sup>

### II. SUMMARY OF REQUEST

AKC IE wishes to participate in the upcoming MOA election by making independent expenditures supporting or opposing one or more candidates.<sup>7</sup> Because BM2 will take effect during the MOA election cycle, AKC IE seeks guidance on the permissible use of existing funds, as well as prospective funds it intends to raise.<sup>8</sup>

### III. QUESTIONS PRESENTED

1. In connection with its independent expenditures, may AKC IE disclose funds received prior to February 28, 2021, by identifying its contributors as the

---

<sup>1</sup> Ex. 1, Request for Advisory Opinion.

<sup>2</sup> Ex. 2, Sample General Election Ballot.

<sup>3</sup> *Id.* See also, AS 15.13.400(17) (eff. Feb. 28, 2021).

<sup>4</sup> Ex. 3, Ballot Measure 2 Certificate.

<sup>5</sup> AS 15.45.220 [act becomes effective 90 days after certification].

<sup>6</sup> Ex. 4, Notice of Vacancy.

<sup>7</sup> Ex. 1.

<sup>8</sup> *Id.*

- individuals or persons who wrote the check or otherwise made the contribution to AKC IE, even if under the new law they may not be the “true source”?
2. In connection with its independent expenditures, for funds received on and after February 28, 2021, must AKC IE report the “true source” of its contributions, even if received through an intermediary?

#### **IV SHORT ANSWERS**

1. Yes. Prior to February 28, 2021, contributions should be disclosed by identifying the individual or person who made the contribution, but until then AKC IE is not required to make further inquiry as to the “true source” of the contributor.
2. Contributions AKC IE receives on and after February 28, 2021, that exceed \$2,000 in the aggregate from a contributor must be disclosed by identifying the “true source” and any intermediaries.

#### **V. LAW**

##### **A. Pre-BM2**

Prior to the effective date of BM2, persons who intend to engage in candidate-related independent expenditure activities must first register and establish a political activities account from which all funds used for independent expenditures must be drawn.<sup>9</sup>

Independent expenditures must be disclosed to include, among other things, contributions received, expenditures made, and debts incurred.<sup>10</sup> These disclosures must be filed “not later than 10 days after an...expenditure has been made” unless it is within the nine days prior to the election, in which case must be filed “not later than 24 hours after the expenditure is made.”<sup>11</sup>

If the person solicits contributions for the purpose of making independent expenditures, the person must disclose the aggregate amount of contributions it receives and for each contributor, identify the date of the contribution, the amount, and if from an individual and over \$50, the person must identify the “name, address, principal occupation, and employer of the contributor.”<sup>12</sup> If the contributor is not an individual, the person must disclose “the name and address of the contributor and the name and address of each officer and director of the contributor.”<sup>13</sup>

---

<sup>9</sup> AS 15.13.050(a); AS 15.13.052

<sup>10</sup> AS 15.13.040(d)-(e).

<sup>11</sup> AS 15.13.110(h).

<sup>12</sup> AS 15.13.040(e)(5)(A).

<sup>13</sup> AS 15.13.040(e)(5)(B).

## Post-BM2

BM2 does not change a person's or group's registration requirements. Indeed, persons and groups who make independent expenditures must still register prior to making expenditures.<sup>14</sup> However, BM2 requires additional reporting for individuals and persons who make contributions to entities such as AKC IE who are involved in candidate independent expenditures and requires the true source, and any intermediaries, of contributions, in excess of \$2,000, be identified.<sup>15</sup>

For contributors who give more than \$2,000 to an entity involved in candidate independent expenditure activities, the contributor must disclose to APOC the name, address, and principal occupation and employer of the individual filing the report, the amount of the contribution and the aggregate amount contributed to the person during the calendar year within 24 hours of making the contribution.<sup>16</sup> The contributor must also report and certify the true sources of the contribution, and any intermediaries, and provide the same information to the receiving entity at the time of making the contribution.<sup>17</sup>

For entities making independent expenditures in candidate elections, once contributions received "in the current election cycle exceed \$2,000 in a single year, that entity shall report that contribution, and all subsequent contributions, not later than 24 hours after receipt."<sup>18</sup> Moreover, the entity is required to "certify and report the true source, and all intermediaries, if any, of the contribution."<sup>19</sup>

BM2 defines true source to mean "the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services."<sup>20</sup> It provides that funds derived from contributions, donations, dues, or gifts are not true source funds but are instead considered intermediary funds.<sup>21</sup> There is an exception which provides that membership organizations who receive dues or contributions of less than \$2,000 per person per year are considered the true sources.<sup>22</sup>

---

<sup>14</sup> AS 15.13.050.

<sup>15</sup> AS 15.13.040(s) and AS 15.13.110(k) (eff. Feb. 28, 2021).

<sup>16</sup> AS 15.13.040(s) (eff. Feb. 28, 2021).

<sup>17</sup> *Id.*

<sup>18</sup> AS 15.13.110(k) (Feb. 28, 2021).

<sup>19</sup> *Id.*

<sup>20</sup> AS 15.13.400(18) (eff. Feb. 28, 2021).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

## **VI. ANALYSIS**

As an entity that intends to make independent expenditures in the upcoming Anchorage mayoral race, AKC IE will need to file under both the current law and the law as amended by BM2, once effective and depending on when independent expenditures are made. Because BM2 does not change the existing reporting requirements for independent expenditures, AKC IE will need to file IE reports after making independent expenditures, and 24-hour reports if and when it receives more than \$2,000 in contributions.

### **A. Contributions Received Prior To February 28, 2021**

Contributions that AKC IE collects prior to the effective date of the new law will be subject to the reporting regime as it currently exists. That is to say that its independent expenditures would trigger a requirement to file an IE report within 10 days. When filing an IE report and disclosing its contributors, if the contributions are received prior to February 28, 2021, AKC IE would disclose the contributor as the person who transmitted the funds.

### **B. Contributions Received On And After February 28, 2021**

Once effective, BM2 will require that AKC IE track its cumulative contributions and once those contributions exceed \$2,000, AKC IE will be required to file a 24-hour report disclosing the contribution and any subsequent contributions it receives, within 24 hours. This 24-hour report must identify the true source of the contribution and any intermediaries.

This report is similar to the 24-hour report that is filed by candidates and groups under the current AS 15.13.110(b) and will be incorporated into the existing online form. The 24-hour report, by nature, is not a full report and contributions are disclosed only by date, amount, and contributor name. Full disclosure to include contributor address and principal occupation and employer information will be required when AKC IE files its independent expenditure reports under AS 15.13.110(h).

During the nine days prior to the election, in the event that AKC IE's activities trigger both the 24-hour contribution and 24-hour IE reporting requirements, it can satisfy both requirements by filing the more comprehensive 24-hour IE report.

### **C. AKC IE's Contributors**

AKC IE should be aware that under BM2, its contributors are also subject to reporting requirements and face possible civil penalties for late-filed reports and misreporting or failing to identify true source information.<sup>23</sup> Under BM2, contributors must

---

<sup>23</sup> AS 15.13.390(a)(2)-(3) (eff. Feb. 28, 2021).

provide and certify the true source funding information to AKC IE at the time the contribution is made.<sup>24</sup> APOC staff will strive to inform contributors, but AKC IE, as the receiving entity is in the best position to ensure its contributors are aware of its reporting requirements. Additionally, because BM2 prohibits AKC IE from accepting contributions without attaining the true source information, AKC IE must take care to obtain the true source information at the time the contribution is received.

**VII. CONCLUSION**

BM2 does not change AKC IE’s existing registration or reporting requirements for their candidate-related independent expenditure activities. However, once effective, BM2 requires that AKC IE ensure it receives true source contributor information for all contributions it receives and once its contributions exceed \$2,000 in the aggregate, AKC IE must disclose its contributions to include true source contributor information and any intermediaries, within 24 hours to comply with the new provisions enacted under BM2.

**VIII. COMMISSION DECISION**

On June 9, 2021, the Alaska Public Offices Commission heard and approved this advisory opinion by a vote of 5-0.

<p><b>Certificate of Service:</b> I hereby certify that on this date, I served, by <b>certified mail</b> and <b>email</b> a true and correct copy of the foregoing in this proceeding on the following:</p>	<p>and by <b>email</b> to:</p>
<p>Jenny-Marie Stryker The Alaska Center IE 311 W. 22<sup>nd</sup> Avenue, Unit C Anchorage, AK 99503 jennymarjie@akcenter.org</p>	<p>Heather Hebdon Executive Director Alaska Public Offices Commission heather.hebdon@alaska.gov</p>

  
Paralegal Date

<sup>24</sup> AS 15.13.040(s) (eff. Feb. 28, 2021).

## APPLICABLE LAW

### ALASKA STATUTES

#### **Sec. 15.13.040. Contributions, expenditures, and supplying of services to be reported.**

(d) Every person making an independent expenditure shall make a full report of expenditures made and contributions received, upon a form prescribed by the commission, unless exempt from reporting.

(e) Each person required to report under (d) of this section shall file a full report in accordance with AS 15.13.110(h) on a form prescribed by the commission. The report must contain

(1) the name, address, principal occupation, and employer of the individual filing the report;

(2) an itemized list of all expenditures made, incurred, or authorized by the person;

(3) the name of the candidate or the title of the ballot proposition or question supported or opposed by each expenditure and whether the expenditure is made to support or oppose the candidate or ballot proposition or question;

(4) the name and address of each officer and director, when applicable;

(5) the aggregate amount of all contributions made to the person, if any, for the purpose of influencing the outcome of an election; for all contributions, the date of the contribution and amount contributed by each contributor; and, for a contributor

(A) who is an individual, the name and address of the contributor and, for contributions in excess of \$50 in the aggregate during a calendar year, the name, address, principal occupation, and employer of the contributor; or

(B) that is not an individual, the name and address of the contributor and the name and address of each officer and director of the contributor.

(s) Every individual, person, nongroup entity, or group that contributes more than \$2,000 in the aggregate in a calendar year to an entity that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that is making one or more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle shall report making the contribution or contributions on a form prescribed by the commission not later than 24 hours after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that entity by that individual, person, nongroup entity, or group during the calendar year. For purposes of this subsection, the reporting contributor is required to report and certify the true sources of the contribution, and intermediaries, if any, as defined by AS 15.13.400(18). This contributor is also required to provide the identity of the true source to the recipient of the contribution simultaneously with providing the contribution itself.

**Sec. 15.13.050. Registration before expenditure.**

(a) Before making an expenditure in support of or in opposition to a candidate or before making an expenditure in support of or in opposition to a ballot proposition or question or to an initiative proposal application filed with the lieutenant governor under AS 15.45.020, each person other than an individual shall register, on forms provided by the commission, with the commission.

**Sec. 15.13.052. Independent expenditures; political activities accounts.**

(a) Before making an independent expenditure in support of or in opposition to a candidate or before making an independent expenditure in support of or in opposition to a ballot proposition or question, each person other than an individual, candidate, or nongroup entity with an annual operating budget of \$250 or less shall establish a political activities account. The political activities account may be a separate account in the person's general treasury. The political activities account must be administered using generally accepted accounting principles. All funds used by the person to make independent expenditures must be drawn from the person's political activities account.

**Sec. 15.13.110. Filing of reports.**

(h) An independent expenditure report required under AS 15.13.040(e) shall be filed with the commission not later than 10 days after an independent expenditure has been made. However, an independent expenditure that exceeds \$250 and that is made within nine days of an election shall be reported to the commission not later than 24 hours after the expenditure is made.

(k) Once contributions from an individual, person, nongroup entity, or group to an entity that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that is making one or more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle exceed \$2,000 in a single year, that entity shall report that contribution, and all subsequent contributions, not later than 24 hours after receipt. For purposes of this subsection, the entity is required to certify and report the true source, and all intermediaries if any, of the contribution as defined by AS 15.13.400(18).



**Sec. 15.13.390. Civil penalty; late filing of required reports.**

(a)(1) A person who fails to register when required by AS 15.13.050(a) or who fails to file a properly completed and certified report within the time required by AS 15.13.040, 15.13.060(b)-(d), 15.13.110(a)(1), (3), or (4), (e), or (f) is subject to a civil penalty of not more than \$50 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil penalty of not more than \$500 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court;

(2) A person who, whether as a contributor or intermediary, delays in reporting a contribution as required by AS 15.13.040(s) is subject to a civil penalty of not more than \$1,000 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court;

(3) A person who, whether as a contributor or intermediary, misreports or fails to disclose the true source of a contribution in violation of AS 15.13.040(s) or AS 15.13.074(b) is subject to a civil penalty of not more than the amount of the contribution that is the subject of the misreporting or failure to disclose. Upon a showing that the violation was intentional. A civil penalty of not more than three times the amount of the contribution in violation may be imposed. These penalties as determined by the commission are subject to right of appeal to the superior court;

**Sec. 15.13.400. Definitions.**

(17) "dark money" means a contribution whose source or sources, whether from wages, investment income, inheritance, or revenue generated from selling goods or services, is not disclosed to the public. Notwithstanding the foregoing, to the extent a membership organization receives dues or contributions of less than \$2,000 per person per year, the organization itself shall be considered the true source.

(18) "true source" means the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services. A person or legal entity who derived funds via contributions, donations, dues, or gifts is not the true source, but rather an intermediary for the true source. Notwithstanding the foregoing, to the extent a membership organization receives dues or contributions of less than \$2,000 per person per year, the organization itself shall be considered the true source.

**Sec. 15.45.220. Adoption and effective date of proposed law.**

If a majority of the votes cast on the initiative proposition favor its adoption, the proposed law is enacted, and the lieutenant governor shall so certify. The act becomes effective 90 days after certification.