

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

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In Re: Request for)
Advisory Opinion by the)
Alaska Democratic Party)
_____)

AO No. 21-04-CD

FINAL ORDER APPROVING ADVISORY OPINION


The Alaska Democratic Party sought an advisory opinion from the Alaska Public Offices Commission on whether the party could create an independent entity for the purposes of reporting disclosures required by the newly enacted Ballot Measure 2. The Commission considered staff’s draft advisory opinion, dated May 10, 2021, at its regular meeting on June 9, 2021, and approves the opinion in its entirety.¹

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.²

Dated: June 21, 2021

BY ORDER OF THE ALASKA PUBLIC OFFICES COMMISSION³

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:	
Lindsay Kavanaugh Executive Director Alaska Democratic Party 2602 Fairbanks Street Anchorage, AK 99503 lindsay@alaskademocrats.org	and by email to: Heather Hebdon Executive Director Alaska Public Offices Commission heather.hebdon@alaska.gov


Paralegal Date

¹ See AS 15.13.374, 2 AAC 50.826.
² AS 44.62.560, 2 AAC 50.826(c)(3), Alaska R. App. P. 602.
³ Commissioners Anne Helzer, Richard Stillie, Suzanne Hancock, and Dan LaSota voted to approve the advisory opinion. Commissioner Van Lawrence dissented.

ADVISORY OPINION REQUEST

Number: AO 21-04-CD
Requested By: Alaska Democratic Party (“ADP”)
Prepared By: Thomas Lucas, Campaign Disclosure Coordinator
Date Issued: May 10, 2021
Subject: Creation of an entity within a political party’s structure that would exist independent of the political party for purposes of reporting under Ballot Measure 2 (“BM2”)¹

Commission Decision: On June 9, 2021, the Alaska Public Offices Commission heard and approved this advisory opinion by a vote of 4-1. Commissioner Van Lawrence dissented.

I. BACKGROUND

In November 2020, BM2 appeared on the state’s general election ballot.² The measure, among other things, sought to prohibit the use of “dark money” in Alaska’s candidate elections.³ A majority of votes cast favored the adoption of BM2 and the election results were certified on November 30, 2020.⁴ Therefore, provisions of BM2 became effective on February 28, 2021.⁵

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.⁶

However, BM2 requires additional reporting for individuals and persons who make contributions to entities 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; and requires the true source, and any intermediaries, of contributions in excess of \$2,000, be identified.⁷

For persons or groups that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that are making one or more independent expenditures in one or more candidate elections in the current election cycle,

¹ Ex. 1, Request for Advisory Opinion.
² Ex. 2, Sample General Election Ballot.
³ *Id.* See also AS 15.13.400(5).
⁴ Ex. 3, Ballot Measure 2 Certificate.
⁵ AS 15.45.220.
⁶ AS 15.13.050.
⁷ AS 15.13.040(s) and AS 15.13.110(k) (eff. Feb. 28, 2021).

or that the contributor knows or has reason to know are likely to make independent expenditures in one or more candidate elections in the current election cycle, once contributions received “in the current election cycle exceed \$2,000 in a single year from a single contributor, that person or group shall report that contribution, and all subsequent contributions, not later than 24 hours after receipt.”⁸ Moreover, they are required to “certify and report the true source, and all intermediaries, if any, of the contribution.”⁹

An individual may contribute up to \$5,000 per year to a political party.¹⁰

ADP is a political party that, in the past 2020 election cycle and the current election cycle has made independent expenditures supporting or opposing one or more candidates.¹¹

A political party is “any group that is a political party under AS 15.80.010 and any subordinate unit of that group if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, house district, or precinct.”¹²

II. QUESTION PRESENTED

ADP asks if it may create a separate entity under its current structure and thereafter exist as a binary state party entity: the Alaska Democratic Party and the Alaska Democratic Party – Independent Expenditure (“ADP IE”). The purpose of the endeavor is to insulate ADP from BM2 reporting requirements by setting up a separate bank account for ADP IE; by having ADP IE solicit and receive unlimited contributions specifically for making independent expenditures; and by having ADP IE make all independent expenditures in the future. In addition to soliciting contributions ADP IE would be further funded by transfers of funds from ADP’s general treasury account and the general treasury accounts of its subordinate units.¹³

III. SHORT ANSWER

No, ADP may not create a separate entity under its current structure and thereafter exist as a binary state party entity.

ADP is not asking if it may form an additional subordinate unit, which it can do if it likes. Nor is it asking if it may set up a political activities account within its general treasury. Instead, it proposes to create an entity that is of ADP but separate from ADP for purposes

⁸ AS 15.13.110(k) (eff. Feb. 28, 2021).

⁹ *Id.*

¹⁰ AS 15.13.070((b)(2)).

¹¹ Ex. 4 and Ex. 5, Independent Expenditure Reports.

¹² AS 15.13.400(17); *see also* AS 15.80.010.

¹³ Ex. 1.

of the Commission's long-standing policy of considering a contribution to a political party subordinate unit as a contribution to the party that it is subordinate to.¹⁴ This it may not do.

IV. ANALYSIS

Because ADP made independent expenditures in the last election cycle and is making independent expenditures in the current election cycle, it is required to file a 24-hour report when it receives a contribution in excess of \$2,000.¹⁵ ADP's contributors of more than \$2,000 are required to file a Statement of Contributions report within 24 hours of making the contribution.¹⁶ ADP desires to insulate itself and its contributors from these BM2 reporting requirements by creating a separate entity, namely ADP IE, for receiving contributions and making independent expenditures.¹⁷ ADP concludes that by doing so, the BM2 reporting requirements would only apply to contributions received by ADP IE.¹⁸ In reaching this conclusion, ADP relies in part on the Commission's decision in AO 10-15-CD, Laborers Local 341 ("Local 341").¹⁹

In Local 341, the Commission was asked if a labor organization could make independent expenditures and solicit contributions for that purpose. The Commission determined that Local 341 could make such expenditures and that it could solicit unlimited contributions to its political activities account²⁰ for doing so.²¹

Here, however, ADP is not asking if it may create a political activities account as in Local 341. Indeed, as a political party, ADP's general treasury account is its political activities account. It is not required to create a separate account for making the independent expenditures it has made in the past or is currently making. Instead, ADP asks if it may create a separate entity that, when all is said and done, is indistinguishable from an independent expenditure group.

In addition to every state and regional executive committee of a political party, a group is any combination of two or more individuals acting jointly for the principal purpose of influencing the outcome of one or more elections.²² The key entity that this definition of group hinges on is the individual. Under AS 15.13.400(12), an individual is defined as a natural person. Thus, ADP may not create what is, in essence, an independent expenditure

¹⁴ See, for example, AO 97-02-CD, Alaska Democratic Party <https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=4725>.

¹⁵ AS 15.13.110(k) (eff. Feb. 28, 2021).

¹⁶ AS 15.13.040(s) and AS 15.13.110(k) (eff. Feb. 28, 2021).

¹⁷ Ex. 1.

¹⁸ *Id.*

¹⁹ <https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=4839>

²⁰ AS 15.13.052(a). The political activities account may simply be a line item in a person's general treasury account.

²¹ <https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=4839>

²² AS 15.13.400(9).

group to avoid the reporting requirements of BM2 when those requirements have been triggered by ADP's past and present independent expenditure activity.

Given that ADP may not create a separate entity for purposes of avoiding BM2 contribution reporting, the issue of who is responsible for the reporting, i.e. the subordinate unit, ADP, or both, remains. When a subordinate unit receives a contribution in excess of \$2,000 from a single contributor, is ADP or the subordinate unit responsible for the 24 hour report? Perhaps more troublesome is the question of who is responsible for reporting when the contributions to various subordinate units and ADP from a single contributor aggregate in excess of \$2,000.

Unfortunately, BM2 does not provide a direct answer to this issue. ADP points out that subordinate units have their own bank accounts, receive contributions and make expenditures independently of ADP.²³ From this, ADP argues that its subordinate units should be treated independently of ADP for purposes of BM2 reporting. ADP points out that just because contributions to its subordinate units and itself must be aggregated for purposes of contribution limits, it does not necessarily follow that they must be aggregated for purposes of the BM2 trigger when only ADP is making independent expenditures.²⁴ Nevertheless, aggregation in the BM2 context is appropriate because “[a] contribution to a subordinate unit of a political party is a contribution to the political party.”²⁵

Accordingly, ADP is responsible for all BM2 reporting under all circumstances where a subordinate unit receives a contribution in excess of \$2,000; or when a single contributor has contributed in excess of \$2,000 in the aggregate to ADP or any of its subordinate units or any combination of subordinate units or ADP.

V. CONCLUSION

ADP is required to file 24-hour reports for all contributions in excess of \$2,000 received from any single contributor on or after February 28, 2021. Further, ADP is required to report the true source of all such contributions. Contributions received and made by ADP's subordinate units are counted as contributions received and made by ADP for purposes of ADP's annual contribution limits. ADP is responsible for all BM2 reporting regardless of whether or not the triggering contribution is made to one or more of its subordinate units.

²³ Ex. 6. Although ADP's subordinate units act independently, they must notify ADP when a contribution is made to a candidate or when it receives a contribution from an out-of-state contributor


²⁴ ADP suggests that its subordinate units file their own BM2 reports, but only if the subordinate unit has, itself made triggering independent expenditures.

²⁵ 2 AAC 50.250(g).

VI. COMMISSION DECISION

On June 9, 2021, the Alaska Public Offices Commission heard and approved this advisory opinion by a vote of 4-1. Commissioner Van Lawrence dissented.

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:	
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Paralegal Date