

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

In Re: Request for)
Advisory Opinion by)
the 907 Initiative) AO No. 24-04-CD
_____)

FINAL ORDER MODIFYING AND APPROVING ADVISORY OPINION

The 907 Initiative sought an advisory opinion from the Alaska Public Offices Commission relating to the application of true-source reporting rules for contributions to ballot measure groups. After staff issued the draft advisory opinion, the 907 Initiative asked for the opinion to be withdrawn, explaining that it would resubmit the request later. At the regular meeting on August 29, 2024, we considered the withdrawal request and the draft advisory opinion. Although we may accept a withdrawal request by rejecting the draft opinion, we instead approve the opinion with modifications to address the 907 Initiative’s concerns.¹

As explained in the final advisory opinion attached to and incorporated by reference in this order, we approve of staff’s answers about the application of true-source disclosures for contributions of more than \$500 to ballot measure groups under AS 15.13.040(k). But we have modified the final advisory opinion in two respects.

¹ See AS 15.13.374; 2 AAC 50.826(c). Because draft advisory opinions create safe harbors for others engaged in similar activities, AS 15.13.374 requires Commission action after staff issues a draft advisory opinion. While staff may allow a requester to withdraw questions before issuing a draft advisory opinion or may accept additional information or questions from a requester and revise a draft advisory opinion before the Commission’s consideration, staff cannot withdraw an already issued draft advisory opinion altogether as was requested here.

First, we added analysis about why this is the correct statutory interpretation to address the 907 Initiative’s concerns that the staff’s draft advisory opinion conflicted with staff instructions on the statement of contributions form and a prior advisory opinion, The Alaska Center, AO No. 21-11-CD. The form instructions were wrong, and staff corrected the form when staff issued the draft advisory opinion. The prior advisory opinion addressed reporting obligations for ballot measures under a different statute than the one at issue here—AS 15.13.110(k), not AS 15.13.040(k). Although that opinion does not conflict with this one, we are modifying The Alaska Center advisory opinion to clarify that it is confined to reporting obligations under AS 15.13.110(k).²

Second, the Commission provides for a delayed effective date for this advisory opinion. We acknowledge that staff’s instructions on the statement of contributions form were incorrect before staff’s issuance of the draft advisory opinion on August 16, 2024. To give regulated parties notice and time to comply with this advisory opinion, we make the final approved advisory opinion effective November 6, 2024.³ Form 15-5 reports disclosing contributions to ballot measure groups that are filed before the effective date

² See 2 AAC 50.840(e) (permitting commission to revise a prior advisory opinion for good cause); Order Revising Advisory Opinion for Good Cause, In re: Request for AO by The Alaska Center, AO No. 21-11-CD (Sept. 9, 2024).

³ Although the Commission’s informal practice is to make decisions on draft advisory opinions no later than 10 days after the draft is considered at a meeting, no statute or regulation requires issuance of a final decision on an advisory opinion—much less that a final advisory opinion take effect—within that timeframe. See AS 15.13.374; 2 AAC 50.826(c); 2 AAC 50.840.

of this advisory opinion need not disclose the true sources as that term is defined in AS 15.13.400(19).⁴

This is a final Commission decision and may be appealed to the superior court within 30 days.⁵ A request for the Commission to reconsider this order must be made within 15 days after issuance of this order.⁶

Dated: September 9, 2024

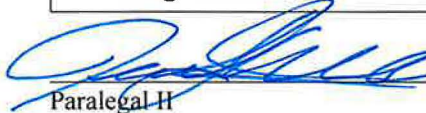
BY ORDER OF THE ALASKA PUBLIC OFFICES COMMISSION⁷

Certificate of Service:

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

Amber Maltbie
Nossaman, LLP
777 South Figueroa Street, 34th Floor
Los Angeles, CA 90017
amaltbie@nossaman.com

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


Paralegal H 9.9.24
Date

⁴ This delayed effective date does not excuse compliance with the requirement that contributions (and the reporting of contributions) must comply with AS 15.13.074(b), which prohibits giving in the name of another. *See Order, Alaskans for Honest Elections v. Alaska Pub. Offices Comm'n*, No. 3AN-24-04508 CI at 32-38 (affirming Commission's conclusion that a natural person intended to give directly to a ballot measure group, violated AS 15.13.074(b) by passing his contribution through an entity that he controlled, and violated AS 15.13.040(k) by not filing a contribution report disclosing that he gave to the ballot measure group).

⁵ AS 44.62.560; 2 AAC 50.826(c)(3); Alaska R. App. P. 602.

⁶ AS 44.62.540; 2 AAC 50.840(c).

⁷ Commissioners Richard Stillie, Dan LaSota, Lanette Blodgett, Eric Feige, and Walt Monegan participated in this matter. The decision was made on a 5-0 vote.

Number: AO 24-04-CD
Requested By: Amber Maltbie on behalf of the 907 Initiative
Prepared By: Heather Hebdon, Executive Director
Date Issued: August 16, 2024
Subject: Request for an Advisory Opinion
Commission Decision: The Alaska Public Offices Commission heard this advisory opinion on August 29, 2024, and approves it with modifications reflected in this version by a vote of 5-0.

I. QUESTIONS PRESENTED

1. Does “true source” reporting apply when an organization reports a contribution to a ballot measure group under AS 15.13.040(k)?¹
2. If true source reporting does apply to reports under AS 15.13.040(k) and the 907 Initiative contributes to a ballot group funds it acquired from donations that were not specifically made for contributions to a ballot group, (a) may the 907 Initiative disclose only the source of the actual funds used to make the contribution and be in compliance with reporting requirements, and (b) if so, must the 907 Initiative set up a separate account from which ballot measure contributions will be made or can it use an internal accounting system to designate the donors whose funds comprise a contribution?
3. If the 907 Initiative must disclose certain donors when making a contribution to a ballot measure group, will those donors also be required to file a statement of contributions form (Form 15-5) if the amount of the contribution attributable to them is \$500 or more?
4. If the 907 Initiative makes its contributions exclusively from sources that are commonly understood as investment income, such as capital gains from the sale of appreciated stock that is donated to the organization or otherwise owned by the organization, dividends received on investments, and interest earned on depository accounts, and from no other source, is the organization itself the “true source” of the contribution for purposes of reporting?

¹ Exhibit 1, Advisory Opinion Request. This advisory opinion addresses what must be reported on a Statement of Contributions Form 15-5 when filed by a contributor who donates to ballot measure group; it does not address the reporting obligations of ballot measure groups or of entities making their own expenditures in support of or in opposition to ballot measure.

II. SHORT ANSWERS

1. Yes. If an organization contributes \$500 or more to a ballot group, the organization must file a statement of contributions report identifying the true sources of its contribution under AS 15.13.040(k) and 2 AAC 50.352(b).
2. If the 907 Initiative does not set up a separate account from which ballot measure contributions will be made and instead commingles all its funds in one general account, 907 Initiative may not choose for itself which of its contributors or donors will be considered the true sources of its contributions. If it uses its general fund, it should identify all contributors or donors and the amount of their contributions or donations to its general fund in the immediately preceding 24-month period on its first report.
3. No. The organization must file a report and identify the true sources of funds because it is serving as an intermediary, but the donors to the organization do not ordinarily have an independent reporting requirement.²
4. With several qualifications, yes. An organization is the true source of contributed funds that derive from the organization's investments. It is not, however, the true source of contributed funds that derive from a donation or gift; income derived from donated investments is not a loophole in the campaign finance disclosure requirements.

III. FACTS

- The 907 Initiative is an Alaska-based 501(c)(4) nonprofit corporation that intends to make contributions to ballot measure groups. It has not made any previous contributions or funded independent expenditures related to any candidate or ballot measure election.
- The 907 Initiative derives funds from grants and donations, which it keeps in a general fund. Its existing donors did not give funds with an agreement or understanding that their donations would be used for ballot measures.

² A donor to an organization has an obligation to file a report under AS 15.13.040(k) reporting the donor as the contributor to the ballot group when the donor intends to give to the ballot group, rather than to give to the recipient organization for the organization to use in its discretion for ballot measure activities because donors may not give in the name of another under AS 15.13.074(b). *See* Order Affirming in Part and Reversing in Part Final Order by APOC Following Petition for Rehearing, *Alaskans for Honest Elections v. Alaska Pub. Offices Comm'n*, No. 3AN-24-04508 CI, at 32-38 (Alaska Super. July 18, 2024), on appeal to Alaska Supreme Court, Nos. S-19201 & S-19221 (affirming Commission's conclusion that a natural person intended to give directly to a ballot measure group and violated AS 15.13.074(b) by passing his contribution through an entity that he controlled).

- Perceiving tension between a recent superior court order³ and a prior APOC advisory opinion⁴ and staff instructions on Form 15-5, the 907 Initiative seeks guidance on its reporting requirements.

IV. LAW AND ANALYSIS

A. True Source Reporting Applies to Contributors to Ballot Measure Groups.

Alaska imposes campaign finance disclosure requirements to “inform the electorate” about “where political campaign money comes from and how it is spent,” to “deter actual corruption and avoid the appearance of corruption,” and to detect campaign finance violations.⁵ Where the applicable triggering conditions are met, individuals and organizations must file reports with APOC, detailing their contributions and expenditures to influence Alaska elections.⁶

To effectively meet these goals, campaign finance disclosures must accurately reflect the source of funds. A person cannot make expenditures or contributions anonymously, pseudonymously, or through an intermediary.⁷ This has come to be known as “true source” reporting.

True-source reporting applies to contributors to ballot measure groups. Along with the requirement that contributors give in their own names, under AS 15.13.040(k), “[e]very individual, person, nongroup entity, or group contributing a total of \$500 or more” to a ballot measure group “shall report the contribution or contributions on a form prescribed by [APOC] not later than 30 days after the contribution.” APOC regulations reinforce this point. 2 AAC 50.352(b) requires contributors to “file a statement of contributions in compliance with AS 15.13.040(k).” This regulation also mandates that contributors must “make the contribution in the name of the true source of the money or thing of value.”

Until recently, “true source” was not defined by statute. It was, however, clarified by regulation: 2 AAC 50.258(a) prohibits persons from contributing “using the name of another,” or from using “a third-party conduit to obscure” where the funds derived from.

³ *Id.* at 55 (stating that “Alaska’s true source reporting requirements apply to ballot initiatives in the signature-gathering phase and continue to apply once the petition is certified”).

⁴ AO 21-11-CD, *The Alaska Center*, 5 (approved June 20, 2022) (advising that certain independent expenditures to influence a ballot measure “would be subject to independent expenditure reporting,” but “would not be subject to the true source reporting requirements of AS 15.13.110(k)” because section .110(k) is triggered by independent expenditures for the purpose of influencing a candidate election). <https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=23802>

⁵ *Libertarian Party of Alaska, Inc. v. State*, 101 P.3d 616, 622–23 (Alaska 2004) (quoting *Messerli v. State*, 626 P.2d 81, 84–85 (Alaska 1980)).

⁶ *See generally* AS 15.13.040; AS 15.13.110.

⁷ AS 15.13.074(b); AS 15.13.084; 2 AAC 50.352(b); 2 AAC 50.258(a).

In 2020, Alaska voters approved Ballot Measure 2 (“BM2”). The measure was intended to further “increas[e] transparency,” “prohibit[] the use of dark money in [Alaska’s] candidate elections,” and “require[] the prompt, accessible, comprehensible, and public disclosure of the true and original sources of funds used to influence these elections.”⁸

As relevant here, BM2 made several amendments requiring the disclosure and certification of the “true source” of funds.⁹ BM2 also added a statutory definition of “true source,” which contains no language limiting its application to candidate elections:

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.¹⁰

Since BM2’s enactment, APOC has amended its regulations, including 2 AAC 50.352—the regulation that requires contributions to ballot measure groups to be made “in the name of the true source of the money.”¹¹ APOC did not remove or alter the “true source” language. In fact, APOC further clarified, through the amendment of 2 AAC 50.258 that any contribution “made with funds derived from contributions, donations, gifts, or dues whose source is not disclosed to the public...” was a contribution “in the name of another” and prohibited.¹²

The conclusion that AS 15.13.040(k) requires contributors to ballot measure groups to disclose the true sources of the contributed funds also helps effectuate the reporting required of ballot measure groups. Such groups must report contributions and expenditures on disclosure reports—and those reports must include contributors’ true sources, information ballot measure groups will need to obtain from the contributor.¹³

In short, the answer to the 907 Initiative’s first question is yes: contributors to a ballot measure group are subject to “true source” disclosure requirements. In particular, AS 15.13.040(k) requires contributors of \$500 or more to a ballot measure group to report

⁸ 2020 Ballot Measure No. 2, § 1.

⁹ *E.g.*, 2020 Ballot Measure No. 2, §§ 6–7, eff. Feb. 28, 2021.

¹⁰ AS 15.13.400(19).

¹¹ Amended Sept. 25, 2022.

¹² Amended Sept, 25, 2022.

¹³ AS 15.13.040(b) (requiring groups to make “full reports,” including providing the “true sources” of contributions).

their contributions within 30 days. 2 AAC 50.352(b) requires that these contributions be made “in the name of the true source.” And with the enactment of BM2, “true source” is now statutorily defined throughout AS 15.13, including in provisions applicable to ballot measure campaigns. Accordingly, contributions to ballot measure groups must disclose the true sources of the funds—“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.”¹⁴

This interpretation is consistent with APOC’s final order in Case No. 23-01-CD and the superior court’s decision affirming that order in large part in *Alaskans for Honest Elections v. APOC*.¹⁵ The court in that case specifically affirmed APOC’s conclusion that an entity has an obligation to report the true sources of its contributions to ballot measure groups.¹⁶ The court stated, “Alaska’s true source reporting requirements apply to ballot initiatives in the signature-gathering phase and continue to apply once the petition is certified.”¹⁷

This interpretation is also consistent with The Alaska Center AO, No. 21-11-CD. That advisory opinion addressed only the reporting obligations for ballot measure activity under AS 15.13.110(k), which requires the reporting of a contribution of \$2,000 or more to an entity seeking to influence *candidate* elections within 24 hours of making the contribution, rather than the statutory provision at issue here—AS 15.13.040(k), which requires the reporting of a contribution of \$500 or more to a ballot measure group within 30 days of making the contribution. Although APOC does not see a conflict between these two advisory opinions, the Commission has modified that advisory opinion to make it more explicit.¹⁸

But as staff acknowledged during the Commission’s consideration of this advisory opinion, this interpretation diverges from staff’s past practice in terms of the instructions on the online Statement of Contributions Form 15-5. Before staff issued the draft advisory opinion on August 16, 2024, the form stated, “Disclosure of True Sources Not Required” when reporting a contribution to a ballot measure group, and the 907 Initiative explained at the meeting that the form did not allow a ballot measure filer to report true sources. This interpretation was staff’s informal guidance and was not approved by the Commission in

¹⁴ AS 15.13.400(19). A “membership organization” that receives less than \$2,000 per person per year would still be the true source of these funds.

¹⁵ Order Affirming in Part and Reversing in Part Final Order by APOC Following Petition for Rehearing, *Alaskans for Honest Elections v. Alaska Pub. Offices Comm’n*, No. 3AN-24-04508 CI (Alaska Super. July 18, 2024), on appeal to Alaska Supreme Court, Nos. S-19201 & S-19221.

¹⁶ *Id.* at 38, 55-56 (“As articulated by the Commission below, [the ballot measure group] and [the entity] must identify the true source of the funds contributed from [the entity] to [the ballot measure group].”).

¹⁷ *Id.* at 55.

¹⁸ Order Revising Advisory Opinion for Good Cause, In re: Request for AO by The Alaska Center, AO No. 21-11-CD (Sept. 9, 2024).

regulation, in an advisory opinion, or in a decision on a complaint matter. In fact, the Commission had reached the opposite conclusion in a final order on the complaint matter, discussed above; that order was issued in early January 2024.¹⁹ How long the online form was inaccurate is also unclear: In June 2023, an entity contributing to a ballot measure group was able to disclose a true source on the online form.²⁰ Nevertheless, because of the ambiguity caused by the inaccurate form as this election cycle began in earnest, the Commission makes this advisory opinion effective November 6, 2024, to provide regulated parties sufficient notice to make any necessary changes to their practices and report accordingly. Form 15-5 reports disclosing contributions to ballot measure groups that are filed before the effective date of this advisory opinion need not disclose the true sources as that term is defined in AS 15.13.400(19).²¹

B. An Organization Must Disclose the True Sources of Its Contributions, Consistent with Past Commission Opinions and the Relevant Donation Limits.

This leads to the 907 Initiative’s next question about how true-source reporting works in practice when an organization commingles donations in a general fund. Must the organization disclose only the source of the actual funds used to make the contribution? If so, must the organization set up a political activities account, or can it use its own internal accounting system to designate the donors who are the true sources of a contribution?

These questions are addressed by an advisory opinion approved last year.²² There, a PAC asked the Commission “to adopt a standard whereby a contributing intermediary can pick and choose its donors and contributors to be identified [as the true sources of funds] so long as the total contributed by them is equal to or exceeds the amount the intermediary contributes.”²³ Specifically, the PAC made a contribution of \$30,000 from a general fund in which it commingled funds from donors and contributors. It picked two donors who had given more than \$30,000 combined to the PAC (in fact, one of them had given more than \$30,000 by himself) and reported them as the true sources of the contribution.

¹⁹ Final Order, *Alaskans for Better Elections v. Alaskans for Honest Elections*, Case No. 23-01-CD (Jan. 3, 2024), <https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=25547>.

²⁰ Ranked Choice Education Association’s Statement of Contributions Form 15-5 (June 11, 2023), <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=4832&ViewType=SC>.

²¹ This delayed effective date does not excuse compliance with the requirement that contributions (and the reporting of contributions) must comply with AS 15.13.074(b), which prohibits giving in the name of another. *See* Order, *Alaskans for Honest Elections v. Alaska Pub. Offices Comm’n*, No. 3AN-24-04508 CI at 32-38 (affirming Commission’s conclusion that a natural person intended to give directly to a ballot measure group, violated AS 15.13.074(b) by passing his contribution through an entity that he controlled, and violated AS 15.13.040(k) by not filing a contribution report disclosing that he gave to the ballot measure group).

²² AO 23-03-CD, *Unite America PAC* (approved Feb. 6, 2023), <https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=24452>

²³ *Id.* at 4.

After discussing the purpose of BM2 and true source reporting, the Commission favorably cited 2 AAC 50.270(e), a regulation that allows organizations to use political activities accounts to protect the information of contributors or donors who did not intend to influence Alaska candidate elections. While this regulation “expressly applies to independent expenditure groups that are directly making expenditures to influence candidate elections in Alaska,” “it logically extends to intermediaries required to report the ‘true sources’ of contributions under AS 15.13.040(r).”²⁴ Put directly, “[i]f the recipient group may avoid identifying the source of all its funds by keeping the funds that were not contributed to influence elections in Alaska separate, then an intermediary entity may do so as well by following the same method.”²⁵

But because the PAC did not segregate political funds from its general funds, it could not “choose for itself which of its contributors or donors will be considered the true sources of its contributions using no uniform methodology.”²⁶ Instead, to comply with the letter and spirit of BM2, the PAC would have to “identify all contributors or donors and the amount of their contributions or donations to its unrestricted general fund in the immediately preceding 24-month period . . . on its first Statement of Contributions Report.”²⁷ This period “makes sense because statewide elections occur every two years, and so this period matches the election cycle for state races.”²⁸

This reasoning also logically extends to the true source disclosures required under AS 15.13.040(k). It should also be noted that if an organization has no normal sources of income—getting money only through gifts, dues, and donations—it can still report itself as the true source, so long as it is passing money that it received in increments of less than \$2,000.²⁹

If an organization does not segregate its funds, then it cannot choose for itself which of its contributors or donors is considered the true source of any ballot measure contributions using no uniform methodology.³⁰ Instead, it should disclose all its donors from the previous 24 months who gave more than \$2,000 in a year. This approach best serves the letter and spirit of BM2.

²⁴ *Id.* at 6.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ AS 15.13.400(19) (“[T]o 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.”). Although this exception applies to a “membership organization,” that term is undefined in statute or regulation; thus, any entity that amasses contributions of under \$2,000 per person likely qualifies.

³⁰ Depending on the circumstances, a uniform methodology may obviate the need to disclose all an organization’s donors from the past 24 months. The Commission has not yet considered or approved an alternative methodology.

Additionally, if an organization segregates its ballot measure contribution funds from its general fund, then donors to the general fund cannot be said to be the true source of any ballot measure contributions under the definition in AS 15.13.400(19). There is no nexus between the contribution and any donation to the general fund. Creating an account solely for donations that the organization intends to use to support a ballot group would allow the organization to identify only those donors who give more than \$2,000 specifically to support those efforts.

C. The True Sources of Funds Do Not Have A Separate, Affirmative Reporting Requirement Independent of the Intermediary Organization.

The reporting requirement in AS 15.13.040(k) is imposed on the organization “contributing a total of \$500 or more to a [ballot measure] group.” That is, the reporting requirement is not imposed on the “true sources”—it is imposed on the organization transmitting funds to a ballot measure group.³¹

D. Whether an Organization Is the True Source of Investment Income Will Depend on the Circumstances.

The 907 Initiative’s final question concerns the “investment income” language in the “true source” definition. The 907 Initiative seeks clarification about the “true source” of various types of investment income. The definition of “true source” must be read in its entirety and whether an organization is the true source of its investment income will depend on how that income was derived. While an organization is usually the true source of its investment income, the organization is not the true source if it “derived funds via contributions, donations, dues, or gifts.”³²

The 907 Initiative provides examples of three common types of investment income:

1. Capital gains from the sale of appreciated stock donated to or owned by an organization;
2. Dividends received on investments; and
3. Interest earned on (non-segregated) depository accounts.³³

³¹ This is the case so long as the true source is giving to the intermediary organization for that organization to use the contribution to advocate for or against ballot measures in the ways the organization sees fit, rather than a true source who contributes “in the name of another” in violation of AS 15.13.074(b) as was the case where a natural person publicized his intent to give to a ballot measure group and effectuated that contribution by passing it through an intermediary entity that he controlled. *See Order, Alaskans for Honest Elections v. Alaska Pub. Offices Comm’n*, No. 3AN-24-04508 CI at 32-38.

³² AS 15.13.400(19).

³³ Ex. 1.

Whether each of these sources of funds will be “investment income” and thus the true source of a contribution would depend on the circumstances. If an organization receives capital gains or dividends from its own investments, those capital gains and dividends likely will be the organization’s investment income. But if the capital gains are from the sale of stock that was donated in-kind to the organization, those capital gains likely will not be the organization’s investment income. Similarly, interest on an organization’s account may also be investment income, unless the account was funded entirely by donations that exceed \$2,000 per person per calendar year. Under AS 15.13.400(19), an organization is the true source only if it derived the funds itself and is not acting as an “intermediary” for another contributor.

Consider one version of the 907 Initiative’s first example: capital gains from the sale of appreciated stock that was donated to an organization. True, the capital gains are “investment income” from stock the organization possesses. Thus, the organization would appear to be “the person or legal entity whose contribution is funded from . . . investment income.”³⁴

But the second clause of the “true source” definition precludes this sort of end-run around the campaign finance transparency requirements. It requires a direct, causal connection between the organization and the funds, such that the organization is not the true source if it “derived [the] funds via contributions, donations, dues, or gifts,” in which case it is just “an intermediary for the true source.”

This sort of direct, causal connection between the funds and the organization is consistent with the laws governing the financial disclosures of public officials.³⁵ There, a public official’s “source of income” is the official’s employer.³⁶ And if the official is self-employed, the source of income is not the official himself or herself—it is official’s clients or customers.³⁷ In that way, officials cannot dodge their “source of income” disclosure requirements by simply listing themselves as self-employed. They must go a step further to be transparent about who pays them. This is analogous to the investment income hypothetical that the 907 Initiative poses. Ultimately, the “true source” of a contribution is the person or entity that derived the funds from wages, making an investment, inheritance, or generating the funds from selling goods or services.

This reading of AS 15.13.400(19) is also consistent with other regulations and the intent of BM2. Under 2 AAC 50.258(a)(7), contributions are prohibited if they are “made with funds derived from contributions, donations, gifts, or dues whose source is not disclosed to the public at the time the contribution is made.” Alaska’s campaign finance disclosure requirements are intended to provide transparency about the source of money in Alaska’s elections. If “investment income” like capital gains, dividends, and interest were

³⁴ AS 15.13.400(19).

³⁵ See AS 15.13.030(9).

³⁶ AS 39.50.200(10).

³⁷ *Id.*

considered an organization's investment income under any circumstances—without reference to how the funds that led to that income were derived—it would create a loophole that undercuts the transparency goals of the disclosure requirements.

V. CONCLUSIONS

If the relevant contribution limits are met, the 907 Initiative must report the true sources of its contributions, as required by AS 15.13.040(k) and 2 AAC 50.352(b).

An organization contributing to a ballot measure group must disclose the true source(s) of the funds used to make the contribution. So, if the organization does not set up a separate account from which ballot measure contributions will be made and instead commingles all its funds in one general account, the organization may not choose for itself which of its contributors or donors will be considered the true sources of its contributions. If it uses its unrestricted general fund, it should identify all contributors or donors and the amount of their contributions or donations to its general fund in the immediately preceding 24-month period on its first report.

The organization must file a report and identify the true sources of funds it contributes to a ballot group because it is serving as an intermediary, but the donors to the organization do not ordinarily have an independent reporting requirement.

An organization is the true source of contributions made from investment income, provided that income derives from the organization's investments and not from contributions, donations, or gifts made to the organization.

This advisory opinion is effective November 6, 2024. Form 15-5 reports disclosing contributions to ballot measure groups that are filed before the effective date of this advisory opinion need not disclose the true sources as that term is defined in AS 15.13.400(19).³⁸

VI. COMMISSION DECISION

The Alaska Public Offices Commission heard this advisory opinion on August 29, 2024, and approves it as modified in this version by a vote of 5-0.³⁹

³⁸ Contributions (and the reporting of contributions) must still comply with AS 15.13.074(b), which prohibits giving in the name of another. *See Order, Alaskans for Honest Elections v. Alaska Pub. Offices Comm'n*, No. 3AN-24-04508 CI at 32-38 (affirming Commission's conclusion that natural person intended to give directly to a ballot measure group and violated AS 15.13.074(b) by passing his contribution through an entity that he controlled).

³⁹ Commissioners Richard Stillie, Lanette Blodgett, Eric Feige, Dan LaSota, and Walt Monegan participated in this matter.

CERTIFICATE OF SERVICE:

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

Amber Maltbie
Nossaman, LLP
777 South Figueroa Street, 34th Floor
Los Angeles, CA 90017
amaltbie@nossaman.com

And by **email** to:

Heather Hebdon
Executive Director
Alaska Public Offices Commission
Heather.hebdon@alaska.gov


Paralegal

9.9.24
Date

APPLICABLE LAW

ALASKA STATUTES

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

(k) Every individual, person, nongroup entity, or group contributing a total of \$500 or more to a group organized for the principal purpose of influencing the outcome of a proposition, and every individual, person, nongroup entity, or group contributing a total of \$500 or more to a group organized for the principal purpose of filing an initiative proposal application under AS 15.45.020 or that has filed an initiative proposal application under AS 15.45.020, shall report the contribution or contributions on a form prescribed by the commission not later than 30 days 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 group by that individual, person, nongroup entity, or group during the calendar year.

Sec. 15.13.400. Definitions

(19) “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. 39.50.200. Definitions

(10) “source of income” means the entity for which service is performed or that is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; but if the person is self-employed by means of a sole proprietorship, partnership, limited liability company, professional corporation, or a corporation in which the person, the person's spouse or domestic partner, or the person's dependent children, or a combination of them, hold a controlling interest, the “source” is the client or customer of the proprietorship, partnership, limited liability company, or corporation, but, if the entity that is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source.

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2 AAC 50.258. Prohibited contributions.

(a) A contribution must be made in the name of the true source of the money or thing of value. A person may not make a contribution using the name of another, or use a third-party conduit to obscure the true source of any money or thing of value contributed to a campaign. A contribution in the name of another prohibited by this section includes any contribution

(1) made at the direction of another person, including a parent organization, subsidiary, division, department, branch, or local unit of a business, labor union, or group;

(2) made by an employee, agent, or other person if an employer, principal, supervisor, or contractor lends, pays, or advances money or anything of value to the employee, agent, or other person to contribute in a name other than the true source of the money or thing of value;

(3) made by an employee, agent, or other person if an employer, principal, supervisor, or contractor reimburses the employee, agent, or other person for the contribution in money or anything of value;

(4) in a total amount exceeding the limitations in AS 15.13.070 if made to the same recipient by two or more groups or nongroup entities that

(A) share the majority of members of their boards of directors;

(B) share two or more corporate or organizational officers; in this subparagraph, "officer"

(i) has the meaning given in AS 15.13.040(r)(2); and

(ii) includes a chief executive officer;

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

(D) are in a parent-subsidiary relationship;

(5) made by a person who receives a gift of money or anything of value from a parent, spouse, or domestic partner for the purpose of making a contribution;

(6) made by check from a joint bank account in the name of any joint account holder who does not either sign the check or authorize the contribution in writing at the time the contribution is made; or

(7) made with funds derived from contributions, donations, gifts, or dues whose source is not disclosed to the public at the time the contribution is made.

2 AAC 50.270. Independent expenditures.

...

(e) A person required to report under AS 15.13.110(k) is not required to report donations that are not intended to influence the outcome of an election if the person

(1) establishes a political activities account as required by AS 15.13.052;

(2) makes no expenditures intended to influence the outcome of an election regulated under AS 15.13 from its general fund;

(3) establishes a written policy that all contributions to the person's political activities account must be from a contributor who has expressly indicated a desire that the contribution be used for political activities or has been expressly solicited for the purpose of making a contribution to the person's political activities account; and

(4) establishes a written policy that the contributor is the only person to decide whether a contribution goes to the person's general fund or the person's political activities account.

...

2 AAC 50.352. Ballot measure activity.

(a) Except for a foreign national as provided in AS 15.13.068, a person may make a contribution to a group that is organized for the principal purpose of

(1) filing an initiative proposal application with the lieutenant governor as provided in AS 15.45.020;

(2) sponsoring or circulating initiative petitions under AS 15.45.090 - 15.45.140 for the purpose of having an initiative measure placed on the ballot;

(3) supporting or opposing the efforts of any group that sponsors or circulates initiative petitions; or

(4) supporting or opposing the outcome of a ballot proposition election.

(b) A person contributing a total of \$500 or more to a group described in (a) of this section shall file a statement of contributions in compliance with AS 15.13.040(k), on a form prescribed by the commission. The statement of contributions must be filed no later than 30 days after the person's total contributions to the group exceed \$500. A person making a contribution to a group described in (a) of this section shall make the contribution in the name of the true source of the money or thing of value as required under 2 AAC 50.258.

(c) A corporation, company, partnership, firm, association, organization, business trust, labor union, or publicly funded entity that makes a contribution to a group described in (a) of this section, or makes an expenditure in support of, or in opposition to, a group described in (a) of this section, shall register in compliance with AS 15.13.050 and 2 AAC 50.290(a), and shall report the information required in AS 15.13.040(b) and (c) unless the entity

(1) makes each contribution and expenditure described in this section from the organization's general day-to-day operating account; and

(2) does not assess, collect, pool, or solicit money or anything of value for the purpose of making any contribution and expenditure described in this section.

(d) An individual who makes an expenditure to influence the outcome of a ballot proposition election or an initiative proposal application is not required to report the expenditure if the individual meets the criteria in AS 15.13.040(h).