

STATE OF ALASKA

Department of Administration

Alaska Public Offices Commission

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July 14, 2008

Representative Les Gara
P. O. Box 202259
Anchorage, AK 99520

RE: Request for an advisory opinion regarding endorsing and soliciting support at a fund raising event paid for with campaign funds of another candidate AO-08-04-CD

Dear Representative Gara:

We are responding to your e-mail request of July 7, 2008 for a formal opinion regarding the legality of introducing and endorsing other candidates and causes at your fundraising event, and asking attendees at your fundraiser to support and help other candidates and causes.

SHORT ANSWER:

A candidate may not pay for a fundraiser with his or her campaign funds, and use that fundraiser to benefit another candidate or group. AS 15.13.112(b)(7) specifically prohibits a candidate from using campaign funds to make a contribution to another candidate or group. Campaigning for other candidates and groups at an event paid for with your campaign funds is a prohibited contribution under AS 15.13.112.

LAW:

Sec. 15.13.112. Uses of campaign contributions held by candidate or group.

(a) Except as otherwise provided, campaign contributions held by a candidate or group may be used only to pay the expenses of the candidate or group, and the campaign expenses incurred by the candidate or group, that reasonably relate to election campaign activities, and in those cases only as authorized by this chapter.

- (b) Campaign contributions held by a candidate or group may not be
- (1) used to give a personal benefit to the candidate or to another person;
 - (2) converted to personal income of the candidate;
 - (3) loaned to a person;
 - (4) knowingly used to pay more than the fair market value for goods or services purchased for the campaign;

(c) A candidate may use up to a total of \$1,000 in campaign contributions in a year to pay the cost of

- (1) attending, or paying the cost for guests of the candidate to attend, an event or other function sponsored by a political party or subordinate unit of a political party;
- (2) membership in a political party, subordinate unit of a political party, or other entity within a political party, or subscription to a publication from a political party; and
- (3) co-sponsorship of an event or other function sponsored by a political party or by a subordinate unit of a political party.

Sec. 15.13.400 Definitions In this chapter

(1) "candidate"

(A) means an individual who files for election to the state legislature, for governor, for lieutenant governor, for municipal office, for retention in judicial office, or for constitutional convention delegate, or who campaigns as a write-in candidate for any of these offices; and

(B) when used in a provision of this chapter that limits or prohibits the donation, solicitation, or acceptance of campaign contributions, or limits or prohibits an expenditure, includes

- (i) a candidate's campaign treasurer and a deputy campaign treasurer;
- (ii) a member of the candidate's immediate family;
- (iii) a person acting as agent for the candidate;
- (iv) the candidate's campaign committee; and
- (v) a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of the candidate;

(4) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made and that is made for the purpose of influencing the nomination or election of a candidate, and in AS 15.13.010(b) for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that are rendered to the candidate or political party;

(B) does not include

- (i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;
- (ii) ordinary hospitality in a home;
- (iii) two or fewer mass mailings before each election by each political party describing the party's slate of candidates for election, which may include photographs, biographies, and information about the party's candidates;
- (iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate; or
- (v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or legislative employee; or
- (vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party;

(6) "expenditure"

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

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

(ii) use by a political party;

(iii) the payment by a person other than a candidate or political party of compensation for the personal services of another person that are rendered to a candidate or political party; or

(iv) influencing the outcome of a ballot proposition or question;

(B) does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(C) includes an express communication and an electioneering communication, but does not include an issues communication;

2 AAC 50.250. CONTRIBUTIONS

(a) In AS 15.13 and this chapter, except as otherwise provided in this section, "contribution"

(1) has the meaning given in AS 15.13.400;

(2) includes a

(A) subscription, advance, transfer, forgiveness of all or part of a debt, relaxation of credit, or anything of value made or provided by a person, group, or nongroup entity for the purpose of influencing an election for state or municipal office or influencing the passage or defeat of a ballot proposition or question; and

(B) personal contribution as described in 2 AAC 50.254; and

(3) does not include

(A) costs incurred in covering or carrying a news story, editorial, or commentary by a broadcasting station, newspaper, or periodical of regular publication, unless the media organization is owned or controlled by a political party, group, or candidate; if the media organization is owned or controlled by a political party, group, or candidate, the cost of the news story is a contribution, unless the news story is a bona fide news account and is part of a general pattern of campaign-related news accounts that gives reasonably equal coverage to all opposing candidates in the circulation or listening area;

(B) a non-monetary contribution or in-kind donation of a single item with a normal cost of \$50 or less;

(C) a payment made by an individual for the individual's own travel expenses, if the payment is voluntary and is made without an understanding that the payment will be directly or indirectly repaid;

(D) a payment made by a business, corporation, trade association, labor union, or other organization not organized primarily to influence elections to communicate directly with the organization's members or employees, or their families, on any subject, if the communication is of the same format used by the organization when it has communicated in the past on nonpolitical subjects, and does not solicit contributions or any action other than voting for or against a candidate or ballot proposition or question;

(E) a gift, loan, advance, or deposit of money or anything of value made with respect to a recount of a state or municipal election;

(F) costs incurred to provide necessary administrative services associated with a payroll withholding plan; these costs may not include expenses associated with soliciting contributions;

(G) provision of a service or facility to a candidate, group, or nongroup entity, if the entity providing the service or facility is paid at a commercially reasonable rate within a commercially reasonable time or makes the service or facility available to all candidates for a particular office;

(H) provision of an organization's membership or mailing list to the group or nongroup entity affiliated with the organization;

(I) the use of personal money or credit by a campaign treasurer or deputy treasurer for an expenditure allowable under AS 15.13.112, if the amount

(i) does not exceed \$500; and

(ii) is repaid before the end of the report cycle in which the expenditure was made; or

(J) the use of personal money or credit by a candidate for an authorized campaign expenditure, if the amount is repaid within three days after the date of the expenditure.

(b) As used in the definition of "contribution" in AS 15.13.400, a loan or loan guarantee includes an endorsement and any other form of security. A loan may not exceed the contribution limitations of AS 15.13.070, whether or not it is repaid. A loan is a contribution at the time it is made. A loan is a contribution by each endorser or guarantor. Each endorser or guarantor is considered to have contributed that portion of the total amount for which the endorser or guarantor agreed to be liable in an oral or written agreement. If the agreement does not indicate the portion of the loan for which each endorser or guarantor is liable, the loan is considered a loan by each endorser or guarantor in the same proportion that each endorser or guarantor bears to the total number of endorsers or guarantors.

(c) The provision of goods or services without charge, or at a charge that is less than the normal charge for the goods and services in the market, is a contribution unless a lower rate is extended to all campaigns. If goods or services are provided at less than the normal charge in the market, the amount of the non-monetary contribution is the difference between the normal charge for the goods or services at the time of the contribution and the amount charged.

(d) The entire amount paid to attend or participate in a fund-raising activity or other political event and the entire amount paid as the purchase price for a fund-raising item sold by a group, nongroup entity, or candidate is a contribution.

(e) The payment by a person of compensation for the personal services of an individual to a group, nongroup entity, or candidate for any purpose, except for legal and accounting services necessary to complete reports, is a contribution unless the individual works voluntarily and on personal time.

(f) The extension of credit by a person to a candidate, group, or nongroup entity, for a length of time beyond normal business practice is a contribution, unless the creditor has made a commercially reasonable attempt to collect the debt using the methods that the creditor ordinarily uses in a manner similar in intensity to that employed by the creditor in pursuit of a debt unrelated to a campaign.

(g) A contribution to a subordinate unit of a political party is a contribution to the political party.

2 AAC 50.405. DEFINITIONS FOR 2 AAC 50.250 - 2 AAC 50.405 AND AS 15.13.

(5) “anything of value” means any item of real or personal property and personal services of any kind, the cost or consideration for which is paid by a person other than the candidate or group for whom the services are rendered; “anything of value” includes facilities, equipment, polling information, supplies, advertising services, membership lists, and mailing lists;

6) “candidate” has the meaning given in AS 15.13.400; “candidate” includes an individual who submits a letter of intent to the commission under 2 AAC 50.274;

FACTS AND ANALYSIS

You are currently a seated legislator and have filed for re-election as representative for house district 23. The facts, as presented to us, are that you are in the process of planning a fundraiser, using your established campaign funds to pay for such things as the invitations, refreshments and entertainment. These campaign funds have been carried forward from your previous campaign or are a combination of carry forward funds and current contributions. You have stated that you want to say a few things at this fundraiser to encourage people to help make this a better state. In addition, you want to talk about current candidates for state and federal offices and how helping these candidates will improve the state and country.

AS 15.13.112 specifies how campaign contributions held by a candidate or group may be used. The general rule of AS 15.13.112(a) is that campaign contributions held by a candidate or group may only be used to pay the expenses of the candidate or group, and the campaign expenses of the candidate or group that relate to the election campaign, and even then only as authorized by statute. AS 15.13.112(b) provides specific examples of prohibited uses of campaign contributions held by a candidate or group. One of the prohibited uses is “to make contributions to another candidate or group.” AS 15.13.112(b)(7).¹ Under the statutes (AS 15.13.400(4)) and regulations (2 AAC 50.250) a “contribution” is defined broadly and includes “a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made and that is made for the purpose of influencing the nomination or election of a candidate....”

¹ There is an exception to this prohibition in the situation where one candidate or group pays for all of, or more than its pro rata share of, a shared campaign activity, and is reimbursed within 7 days. AS 15.13.112(b)(7). The facts as presented do not fall within this exception.

When a candidate uses his or her campaign contributions to pay for the expenses of a fundraiser, and at that fundraiser advocates, campaigns or solicits contributions for another candidate or group, the host is using campaign contributions in violation of AS 15.13.112. The host candidate's funds are being used to provide goods and services for the purpose of influencing the election of another candidate. This is a contribution under AS 15.13.400(4), and such a contribution is prohibited by AS 15.13.112.

With these principles in mind, each of your specific questions is answered below:

Question 1:

"Can I introduce other candidates or campaign staff at my event if they attend, and say something about them/their campaign?"

AS 15.13 does not prohibit a candidate from introducing attendees at a particular function. However, when the line is crossed into attempting to influence the election of another candidate, the host candidate runs afoul of AS 15.13.112. As explained above, that statute prohibits a candidate from contributing campaign funds to another candidate or group. If the line is crossed into campaigning for the other attendees, the funds spent on the event will have been "contributed" to the attendees. Unfortunately without knowing the details of your intention to "say something about them/their campaign" we are unable to render a firm opinion as to which side of the line you will fall.

Question 2:

"Can I tell people which candidates are in close races, and who might need their help if they are willing to help those candidates?"

Again, the line that must be drawn when your statements turn your event, paid for with your campaign funds, into an attempt to influence the election of some other candidate. Asking participants at your fundraiser to assist other candidates is an attempt to influence the elections that the other candidates are involved in. Therefore such a plea to the audience at your fundraiser will result in a violation AS 15.13.112.

Question 3:

"Can I state my preference for President (Barack Obama), and introduce presidential campaign staff who are looking for volunteers."

Stating your own preference in the upcoming presidential race is not prohibited. The electorate in Alaska has a right to know where you stand on the matter, and the statement of your preference would not be seen as an attempt to influence the outcome of the presidential election. And, as stated above, introducing attendees at a particular event is also not prohibited.

However, soliciting for volunteers to work for the Obama campaign does cross the line into an attempt to influence another election. The whole point of working for a campaign—whether compensated or not—is to attempt to influence the outcome of an election. Asking attendees at your fundraiser to volunteer for the Obama campaign would be an attempt to influence the presidential election.

Other Issues Raised

You contend that APOC's view that a campaign speech is a contribution is overly technical, and suggest that it might violate the First Amendment to the United States Constitution.

However, Alaska's campaign finance statutes are constitutional, and do not violate the First Amendment. *See State v. Alaska Civil Liberties Union*, 978 P.2d 597 (Alaska 1999), *cert. denied*, 528 U.S. 1153 (2000). Moreover, the issue here is not whether your speech is a "contribution," the issue is whether the campaign contributions held by you are being contributed to other candidates and groups. Your campaign funds are spent hosting the fundraiser—for invitations, refreshments, and other goods and services.

Raising funds for other candidates or groups, or campaigning for other candidates or groups at your fundraiser necessarily entails that your campaign funds are being expended to influence the outcome of another election. This expenditure is a contribution is therefore a contribution to another candidate or group. Such an expenditure is prohibited by AS 15.13.112.

There is a specific and narrow exception in AS 15.13.112(b) for the situation where a candidate or group pays more than a pro rata share of the costs of a shared campaign activity, as long as that candidate or group is repaid within 7 days. *See* AS 15.13.112(b)(7)(A)-(B). The fact that AS 15.13.112 makes such a narrow exception for prepayment by one candidate of the expenses of a shared campaign activity indicates that the legislature intended the statute to be construed quite strictly, and any contribution that does not fall within that exception is prohibited.

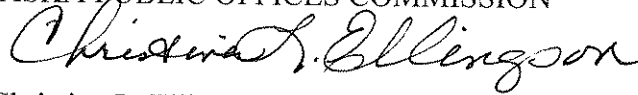
We are mindful of the First Amendment implications of the campaign finance laws, but we do not believe that we are interpreting the laws in a manner that is unconstitutional. The legal issues here arise from the fact that contributions to your campaign would be spent to influence the outcome of other elections. Alaska law guarantees that when an individual makes a contribution to a candidate, that contribution will be spent to benefit that particular candidate, not another candidate to whom the contributor did not make a donation.

Only the Commission has the authority to approve an advisory opinion. The Commission will rule on staff's proposed advice at its August 5, 6, 2008, meeting. If you wish to participate when the Commission considers this matter, please contact me so that this matter can be scheduled for a mutually convenient time during the August meeting. The Commission may approve, disapprove, or modify the proposed advice. An advisory opinion must be approved by an affirmative vote of at least four members or it will be considered disapproved. Both staff's proposed advice and the Commission's final advisory opinion apply only to the specific facts and activities for which the advice was requested.

If you rely on staff's proposed advisory opinion in good faith, and the Commission subsequently rejects the proposed advice, staff will take no enforcement action on activities up to that point if you acted under the specific facts described. If you have any additional questions or would like to discuss this proposed advice, please contact me at 907-334-1725.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

A handwritten signature in cursive script, reading "Christina L. Ellingson".

Christina L. Ellingson, Assistant Director

cc: Holly Hill, Executive Director
APOC Commission Members
Jan DeYoung, Assistant Attorney General
Tom Dosik, Assistant Attorney General
APOC Senior Staff

Ellingson, Christina (DOA)

AO-08-04-CD

From: Les Gara [lesgara@yahoo.com]
Sent: Monday, July 07, 2008 1:07 PM
To: Hill, Holly R (DOA)
Cc: Ellingson, Christina (DOA)
Subject: APOC Formal Opinion Request (and request for call back)

ARRIVED

JUL - 7 2008

APOC - ANCH
PM HC FAX

Hi Holly - I've spoken to Chris Ellingson, who says I cannot speak about certain subjects at my fundraiser tomorrow without raising the risk that I will violate the law. I am writing for a formal opinion on my questions, and to request a call back if you can. Basically, I would like to say a few things at my campaign speech to encourage people to help make this a better state - I'd like to talk a little about people who are running for office to make this a better state and country. I think APOC is taking a position that ignores the right of people to free speech (statutes, to the extent they impinge on free speech rights, legally must be interpreted narrowly), is overly technical, by viewing a campaign speech as a "contribution" under APOC's statutes.

Many of us run for office to improve our community, and to give people advice on how they can change the community. I would like, at my fundraiser tomorrow (my only chance all year to speak to a large group of people, since this will be my only fundraiser) - to give active citizens information how they can volunteer. Here are the questions.

1. Can I introduce other candidates or campaign staff at my event if they attend, and say something about them/their campaign?

2. Can I tell people which candidates are in close races, and who might need their help if they are willing to help those candidates?

3. Can I state my preference for President (Barack Obama), and introduce Presidential campaign staff who are looking for volunteers?

So far I've been told I may not do these things. It seems a clear violation of my right to free speech, and to advocate for community change. I am looking for an opinion that says that I can do these things as a de minimus segment of my talk tomorrow night.

If it is at all possible to get a ruling that I can do these things before tomorrow night, that would be much appreciated. As it stands, I will say none of these things give the telephone advice I have received. Thanks. Les

7/2008

Gara (250-0106)

paid for by Les Gara for State House, POB 202259, Anchorage 99520.