

# STATE OF ALASKA

## ALASKA PUBLIC OFFICES COMMISSION

STEVE COWPER, GOVERNOR

REPLY TO:

- ☒ 2221 E. Northern Lights, Room 128  
Anchorage, AK 99508  
(907) 276-4176
- ☐ Juneau Branch Office  
Box CO  
Juneau, AK 99811-0222  
(907) 465-4864

January 27, 1989

John R. Snodgrass  
840 South Colony Way #250  
Palmer, Alaska 99645

RE: Advisory Opinion Request

Dear Mr. Snodgrass:

At its meeting on January 17, 1989, the Alaska Public Offices Commission reconsidered its previous decision regarding your advisory opinion request dated October 18, 1988. You had asked: (1) whether the payment of attorney's fees incurred by Dr. Curt Menard as a defendant in a suit to defend his right to remain on the ballot is an expenditure within the meaning of AS 15.13.130(3); (2) whether funds raised to pay those fees would be a contribution under the campaign disclosure law, and (3) whether Dr. Menard could use the "contributions" to pay the fees.

By a vote of 4 - 1, the commission approved staff's initial advisory opinion, dated November 23, 1989, which provided that donations to Dr. Menard of funds to pay his legal fees to defend his right to remain on the ballot are not campaign contributions, but are a source of income, and therefore must be reported on his conflict of interest statement. The proposed opinion also stated that Dr. Menard may transfer any surplus from his campaign account into the defense fund, with the name of the account reported as the contributor to the fund on his conflict of interest statement.

The commission concurred with staff's rationale as set forth in the proposed advisory opinion dated November 23, 1988. The commission agrees that donations of this specific type are not intended to influence the outcome of an election, but instead are intended to help Dr. Menard pay a personal debt incurred in seeking a judicial decision.

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December 13, 1988

Mr. John R. Snodgrass, Jr.  
840 South Colony Way #250  
Palmer, Alaska 99645

RE: Advisory Opinion on Representative Curt Menard's  
Legal Fees

Dear Mr. Snodgrass:

At its November meeting, the Alaska Public Offices Commission reviewed staff's proposed advisory opinion of November 23, 1988, in which staff took the position that funds raised by Representative Menard to pay legal fees in defending himself in District 16 Republican Party v. State of Alaska and Curt Menard should not be reported as campaign contributions but instead as a source of income to Representative Menard.

The commission voted 3 to 2 in favor of staff's proposed advice. However, under 2 AAC 50.905 (copy attached), advisory opinions require an affirmative vote of at least 4 members for approval. Consequently, staff's advisory opinion is considered disapproved under commission regulations.

Staff has decided to raise the possibility of reconsidering this matter with the commission at its January 17, 1989 meeting in Anchorage. If the commission does not wish to reconsider the matter, or if the commission reconsiders the matter but again fewer than four members vote in favor of staff's proposed advice, the proposed advisory opinion will remain disapproved.

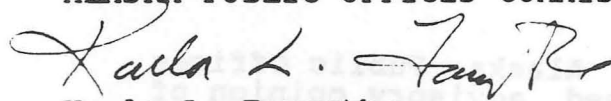
Mr. John R. Snodgrass, Jr.  
December 13, 1988  
Page 2

Under commission regulations, an advisory opinion issued by the commission may be relied upon to the extent that staff may not commence an investigation in the event a complaint is filed. Disapproval of a proposed opinion indicates that in the event of a complaint staff would be obligated to commence an investigation, which ultimately would be brought before the commission for resolution. Given the fact that a majority of the commission agreed with staff's position, staff would not undertake an investigation into this matter on its own initiative.

I hope this information is helpful. If you have any further questions about the commission's action in this matter, please do not hesitate to contact me.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Karla L. Forsythe  
Executive Director

cc: APOC Members  
APOC Senior Staff  
Nancy Gordon, Assistant Attorney General



ARRIVED

OCT 20 1988

JOHN R. SNODGRASS, JR.

ATTORNEY AT LAW

840 SOUTH COLONY WAY #250

PALMER, ALASKA 99645

(907) 745-4278

APPROACH

10/20/88

October 18, 1988

Karla Forsythe, Director  
Alaska Public Offices Commission  
2221 East Northern Lights Blvd., Rm. 128  
Anchorage, Alaska 99508

Dear Ms. Forsythe:

I represent Dr. Curt Menard.

As you may know, the District 16 Republican Party sued Dr. Menard to remove his name for the ballot and thereby reverse the actions of the Division of Elections. Dr. Menard hired an attorney to defend his right to remain on the ballot. Dr. Menard intends to raise funds to pay his attorney's fees and costs.

Dr. Menard requests the Public Offices Commission to issue an opinion whether payment of the attorney's fees incurred in the suit would be an "expenditure" as defined in AS 15.13.130(3).

A related question is whether funds raised to pay those fees would be a "contribution" under AS 15.13.130(2). Would these payments be reportable under and subject to the limitations of AS 15.13?

Finally, if payment of these fees is not an "expenditure" is it proper for Dr. Menard to use "contributions" to pay the fees?

Sincerely,

*John R. Snodgrass, Jr.*

John R. Snodgrass, Jr.

JRS/rac

cc: Dr. Menard

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STEVE COWPER, GOVERNOR

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November 23, 1988

[12]

Mr. John R. Snodgrass, Jr.  
840 South Colony Way #250  
Palmer, AK 99645

Re: Proposed Advisory Opinion on Rep. Curt Menard's Legal Fees

Dear Mr. Snodgrass:

You requested an advisory opinion on behalf of Rep. Menard on whether his legal fees to defend his right to remain on the ballot are subject to the campaign disclosure law, AS 15.13. It is staff's opinion that these fees are subject to the conflict of interest law, AS 39.50, rather than the campaign disclosure law. This opinion is subject to approval by the Alaska Public Offices Commission who meet November 30 - December 1, in Anchorage. The commission may accept, reject or modify a staff proposed opinion.

### I. Statement of Facts

On August 15, 1988, Rep. Curt Menard was a defendant in a law suit filed by the District 16 Republican Party which sought to have his name removed from the ballot. Rep. Menard prevailed and was subsequently re-elected to public office.

Rep. Menard now wishes to raise funds to pay for his legal costs from the case. You have asked whether these fees are a campaign expense and if campaign contributions may be raised and used to pay the fees.

### II. Application of the Law

Campaign contributions include "...gifts of money...made for the purpose of influencing the nomination or election of a candidate..." AS 15.13.130(2).

The purpose of the legal defense fund is to pay Rep. Menard's legal costs incurred in this court case. We

# MEMORANDUM

State of Alaska

[ 18 ]

TO : APOC Members

FROM: Karla L. Forsythe, Executive Director

DATE: January 13, 1989

SUBJ: Staff Request that Commission Reconsider Its  
Disapproval of Proposed Advisory Opinion to  
Representative Curt Menard

At the November 30, 1988 commission meeting, the commission reviewed a proposed staff advisory opinion which had been requested by Representative Curt Menard. Representative Menard had inquired how he could recover the legal expenses of defending himself in a challenge to his right to remain on the ballot. The proposed opinion stated that Representative Menard could raise funds for this purpose, and that the money raised should be reported on his conflict of interest statement rather than his campaign disclosure statement. The commission voted 3 to 2 in support of staff's proposed advisory opinion (see minutes, agenda item 1).

Under 2 AAC 50.905 (copy attached), which is the regulation governing the procedure for requesting an advisory opinion, an advisory opinion must be approved by the affirmative vote of at least four members, or the advisory opinion will be considered disapproved.

As indicated in the attached letter, staff has communicated to Representative Menard staff's interpretation of the consequences to him of the commission's vote. Although a majority of the commission approved staff's advice, under the regulation the opinion is disapproved for lack of an additional affirmative vote. In staff's opinion, this means that there is no basis for a staff-initiated investigation into this matter. However, in the event that a complaint is filed staff will be required to investigate, and to bring the question before the commission in the context of a preliminary investigation report.



State of Alaska  
MEMORANDUM

APOC Members  
January 13, 1989  
Page 2

In the view of staff, this places an individual who voluntarily has sought clarification from the commission in an awkward position. At this point in time, he is without clear guidance from the commission about how to proceed. In view of these considerations, staff requests that the commission reconsider its action on the proposed advisory opinion, in the interests of giving Representative Menard clear guidance.

cc: John Snodgrass, Jr.  
840 South Colony Way, #250  
Palmer, Alaska 99645

Mr. John R. Snodgrass, Jr.  
November 23, 1988  
Page 2

believe contributions to the fund do not influence the outcome of an election, but pay a personal debt incurred in seeking a judicial decision. Contributions to the fund would be considered a source of income to Rep. Menard for purposes of filing the conflict of interest statement. Under 2 AAC 50.015, sources of income include "funds, goods or services donated ...to a public official for personal or professional use..." Therefore, Rep. Menard would report the names of those who contributed more than \$100 to the defense fund as a source of other income to him on the appropriate conflict of interest statement. He would not report the contributors on his campaign disclosure reports.

We also note that gifts for recount expenses are not campaign contributions under 2 AAC 50.313(1)(5). A previous commission opinion found that legal costs incurred for a recount are not subject to campaign disclosure regulation. The nature of expenditure for legal services is somewhat similar in both cases; i.e., the expenditure is made to obtain a judicial decision rather than "influencing the outcome of an election." AS 15.13.130(3). Therefore, we believe that Rep. Menard is required to report the attorney's name as a creditor on the appropriate conflict of interest statement, assuming the debt exceeded \$500. The payment of these legal fees is not reportable on the campaign disclosure reports.

You also asked whether campaign contributions can be used to pay for these legal fees. If Rep. Menard has a campaign surplus, he may transfer that surplus from his campaign account into the defense fund. 2 AAC 50.400(b)(4). The name of the campaign account would be reported as a contributor to the fund on his conflict of interest statement.

The conflict of interest law prohibits using public office for the primary purpose of financial gain and soliciting money for legislative advice or assistance. AS 39.50.090. Every effort should be made to separate fund-raising activity for the defense fund from Rep. Menard's public office and his legislative activity to avoid allegations of violating this section of the law. You may also wish to seek advice from the legislative ethics committee on any provisions of that law.



Mr. John R. Snodgrass, Jr.  
November 23, 1988  
Page 3

### III. Summary of Advice

It is staff's opinion that Rep. Menard's legal fees were not incurred to influence the outcome of a nomination or election to office and, therefore, are not a campaign expenditure. He may seek contributions to his legal defense fund and would report those contributions as a source of (other) income on his conflict of interest statement. The debt for legal services would be reported on the statement as a debt to a creditor. If he has a campaign surplus, he may transfer the surplus to the defense fund.

This staff opinion is subject to commission review and approval. The commission may accept, reject or modify the staff advice. The members will review this advice at the November 30 - December 1 meeting in Anchorage. Please let us know if you would like to participate in the meeting and we will attempt to arrange a mutually convenient time on the agenda. Once the commission has acted on this matter, you will receive written advice on the commission's decision.

Should you have any further questions about this letter or the advisory opinion process, please contact me.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

*Jane Barcott*

Jane Barcott  
Assistant Director

cc: APOC Members  
Karla Forsythe, Executive Director