



Lieutenant Governor Craig E. Campbell

May 18, 2010

Mr. Scott A. Kohlhaas
6701 East 6th Avenue, #24
Anchorage, AK 99504

Ms. Tonya A. Shuravloff
510 North Hoyt Street
Anchorage, AK 99508

Mr. Robert Clift
6402 Hampton Drive
Anchorage, AK 99504

Dear Mr. Kohlhaas; Ms. Shuravloff; and Mr. Clift:

Under the authority of AS 15.45.180(a), I have adopted the following ballot title and proposition. My reasoning for doing so is described in the attached memo from the Department of Law, which I adopt by reference. Under AS 15.45.240 any person aggrieved by this determination may bring an action in the superior court to have the determination reviewed within 30 days.

INITIATIVE PROHIBITING THE USE OF PUBLIC FUNDS TO LOBBY OR CAMPAIGN; AND PROHIBITING HOLDERS OF GOVERNMENT CONTRACTS AND FAMILY MEMBERS FROM MAKING POLITICAL CONTRIBUTIONS

This bill would ban the use of public funds for political campaigns and lobbying by state and local government agencies, and school districts. Public funds could not be used to support or oppose ballot measures, lobby to pass a law, or ask for public funding. Any entity that lobbies or campaigns would be barred from receiving public funds. It would ban political contributions by government contract holders and members of their families. It would ban legislators and their staff from being employed by government contract holders for two years after leaving state service. The bill has criminal and civil penalties.

Should this initiative become law?

Sincerely,

Craig E. Campbell
Lieutenant Governor

attachment

cc: Michael Barnhill, Attorney
Department of Law

Gail Fenumiai, Director
Division of Elections

MEMORANDUM

State of Alaska Department of Law

To: Craig E. Campbell
Lieutenant Governor

Date: May 18, 2010
File No: 663-07-0175

Tel. No.: (907) 465-3600

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From: Michael A. Barnhill *MAB*
Senior Assistant Attorney General
Labor and State Affairs Section

Subject: Ballot Measure 1 (07ANCO)
– Ballot Title and Summary

In December 2007, Lieutenant Governor Sean Parnell certified the petition application for 07ANCO and approved a petition summary under AS 15.45.140. *See* 07ANCO Certification Letter (Dec. 19, 2007). In May 2008, Lieutenant Governor Parnell adopted a ballot proposition that was the same as the petition summary. *See* Notice of Proper Filing Letter (May 18, 2008). We described 07ANCO in our opinion review of it in 2007, and incorporate that description by reference. *See* 2007 Inf. Op. Att’y Gen. (Dec. 18; 663-08-0057).

Your office has been asked to consider the adoption of a ballot proposition under AS 15.45.180(a) that differs from the petition summary and ballot proposition adopted by Lieutenant Governor Parnell. You have asked our office for a recommendation as to how to proceed.

The first issue is whether you have the power to adopt a ballot proposition that is different than the petition summary. The answer is yes. We acknowledge that the general practice of lieutenant governors has been to adopt the same summary for both the petition summary and the ballot proposition.¹ While there is policy merit to this practice, it is not required by law. The statutes for the petition summary and the ballot proposition are different.

Upon certification of a petition application, the lieutenant governor is required to prepare “an impartial summary of the subject matter of the bill.” AS 15.45.090(a)(2).

¹ There are recent exceptions to this general practice. In 2008, Lieutenant Governor Parnell made changes to the ballot proposition in 07CASE (Ballot Measure 3). The superior court ordered changes to the ballot proposition in 09PIMA. *See* Decision and Order, *Planned Parenthood of Alaska v. Campbell*, No. 3AN-09-9236 CI at 21-25 (Super Ct. Alaska March 16, 2010).

Following the circulation of the petition booklets, and the proper filing of the petition, the lieutenant governor must prepare a ballot title and proposition:

[T]he lieutenant governor, with the assistance of the attorney general, shall prepare a ballot title and proposition. The ballot title shall, in not more than 25 words, indicate the general subject of the proposition. The proposition shall give a true and impartial summary of the proposed law. The total number of words used in the summary may not exceed the product of the number of sections in the proposed law multiplied by 50.

AS 15.45.180(a). There are a number of differences between these two statutes. The petition summary does not have a word limit. The ballot proposition has a 50 words per section limit. The attorney general is not required to assist with the preparation of the petition summary (though this always happens in practice). The attorney general is required to assist with the preparation of the ballot proposition. The petition summary is prepared after the certification of the petition application. The ballot proposition is prepared following the proper filing of the petition and signature booklets. The statutes give them different names: petition “summary” and ballot “proposition.” This latter difference is dictated by the Alaska Constitution. *See* art. XI, secs. 3-4, Alaska Constitution.

While the overall objective of both the petition summary and the ballot proposition is the same – to inform voters as to the contents of the measure – there is nothing in AS 15.45.090 and AS 15.45.180 that requires that they be identical. The differences in these statutes suggest that the petition summary and the ballot proposition can indeed be different. Whether they should be different is a matter that is committed to the lieutenant governor’s discretion.

Having concluded that you are authorized by statute to adopt a ballot proposition that differs from the petition summary, the next question is whether you may adopt a different ballot proposition than that adopted by Lieutenant Governor Parnell. The answer is yes. The general rule is that “[i]n the absence of statutory limitations, administrative agencies generally retain inherent authority to reconsider their decisions.” *Moe v. Sex Offender Registry Bd.*, 829 N.E.2d 1088 (Mass. 2005); *Macktal v. Chao*, 286 F.3d 822, 825-26 (5th Cir. 2002). The only limitation in AS 15.45 that would impede your ability to make a change is that of time – Ballot Measure 1 is scheduled to be placed on the August primary ballot. Therefore, the change needs to be made in time for the ballots and other election materials for the August primary to be printed.

We next consider whether there are legitimate grounds to make a change in this case. To answer this question, we must first describe the standard of review the courts apply to petition summaries and ballot propositions.

The Alaska Supreme Court applies the same standard of review to both petition summaries and ballot propositions. *Pebble Ltd. Partnership ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1082 n.80 (Alaska 2009). The Court has explained their purpose as follows:

[T]he basic purpose of the ballot summary is to enable voters to reach informed and intelligent decisions on how to cast their ballots." A summary should be "complete enough to convey an intelligible idea of the scope and import of the proposed law" and "ought to be free from any misleading tendency, whether of amplification, of omission, or of fallacy." "The summary need not recite every detail of the proposed measure," but "if the information would give the elector 'serious grounds for reflection' it is not a mere detail, and it must be disclosed."

Id. at 1082 (footnotes omitted). A petition summary and ballot proposition must be impartial, accurate and complete. *Id.*; *Burgess v. Miller*, 654 P.2d 273, 275 (Alaska 1982). The Court applies a deferential standard of review and will uphold the lieutenant governor's summary unless it cannot reasonably conclude that the summary is impartial and accurate. *Pebble*, 215 P.3d at 1082.

In 2007, Lieutenant Governor Parnell adopted the following petition summary for the 07ANCO measure:

INITIATIVE PROHIBITING PUBLIC FUNDS FOR ELECTION
CAMPAIGNS; ALSO PROHIBITING CAMPAIGN
CONTRIBUTIONS BY HOLDERS OF GOVERNMENT
CONTRACTS

This bill would ban the use of public funds for political campaigns and lobbying. Funds could not be used to support or oppose a ballot measure. The bill would limit political involvement in government contracts. It would ban political contributions by holders of government contracts. It would ban legislators and their staff from being employed by holders of government contracts for two years after leaving state service. The bill has criminal and civil penalties.

See 07ANCO Certification Letter at 2-3 (Dec. 19, 2007). Lieutenant Governor Parnell subsequently adopted the same language for the ballot title and proposition. *See* Notice of Proper Filing Letter (May 18, 2008); *see also* 2007 Inf. Op. Att’y Gen. at 7 (Dec. 18; 663-08-0057) (proposing same language for petition summary and ballot proposition). In our view, this summary was, and is, impartial, accurate and complete. We think that under the deferential standard of review, a reviewing court would uphold this summary for use as a ballot proposition.

It has been brought to our attention, however, that the summary does not explicitly describe the scope of Ballot Measure 1 as including political subdivisions and representational entities, such as the Alaska Municipal League, that use public funds for lobbying. Ballot Measure 1 plainly applies to political subdivisions – they are identified in the first sentence of the proposed measure. *See* Section 1(A). Ballot Measure 1 also plainly prohibits using public funds to pay dues or fees to “any person, league, or association which, directly or indirectly, engages in lobbying, campaigns or partisan activity.” *See* Section 1(A). We think that the term “public funds” as used in the summary certainly implies “all” public funds including public funds used by political subdivisions and funds used to support a representational entity that lobbies on behalf of a political subdivision. Thus, we do not think the lack of explicit reference in the summary to political subdivisions and representational entities is fatal. But an explicit reference to political subdivisions and representational entities would make the summary more complete and help the voters understand the full scope of the initiative.

The summary also did not include family members in its description of the proposed ban on political contributions by holders of government contracts. Ballot Measure 1 plainly prohibits the family members of government contract holders from making political contributions. *See* Section 2(B)-(C). We think it is fair to expand the scope of this description to include family members.

Accordingly, we recommend that your office consider adopting a ballot proposition that differs from the petition summary and ballot proposition adopted by Lieutenant Governor Parnell. In our view, the following ballot title and proposition is impartial, accurate and complete:

INITIATIVE PROHIBITING THE USE OF PUBLIC FUNDS TO
LOBBY OR CAMPAIGN; AND PROHIBITING HOLDERS OF
GOVERNMENT CONTRACTS AND FAMILY MEMBERS
FROM MAKING POLITICAL CONTRIBUTIONS

This bill would ban the use of public funds for political campaigns and lobbying by state and local government agencies, and school districts. Public funds could not be used to support or oppose ballot measures, lobby to pass a law, or ask for public funding. Any entity that lobbies or campaigns would be barred from receiving public funds. It would ban political contributions by government contract holders and members of their families. It would ban legislators and their staff from being employed by government contract holders for two years after leaving state service. The bill has criminal and civil penalties.

Should this initiative become law?

This summary has a Flesch test score of 57.0. We believe that the summary meets the readability standards of AS 15.60.005.

In making your decision regarding the wording of the ballot title and proposition, we suggest that you give notice to all interested persons and groups who may be aggrieved by your decision. AS 15.45.240. This notice will trigger the 30-day appeal period during which these persons must contest your action or be forever barred from doing so. *McAlpine v. University of Alaska*, 762 P.2d 81, 86 (Alaska 1988).