

MEMORANDUM

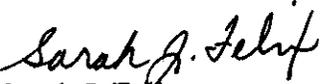
State of Alaska
Department of Law

To: Honorable Sean Parnell
Lieutenant Governor

Date: February 20, 2007

File No.: 663-07-0122

Tel. No.: 465-3600

From: 
Sarah J. Felix
Assistant Attorney General
Labor and State Affairs – Juneau

Re: Initiative application re: Alaskan
independence (07AKIN)

I. INTRODUCTION

You have asked us to review an application for an initiative petition for an Act entitled “An Initiative Requiring the State of Alaska to Vote on Seeking Changes in Existing Law and Constitutional Provisions to Authorize Alaskan Independence.” We have completed our review and find that the application does not comply with the constitutional and statutory provisions governing use of the initiative.

This initiative petition is similar to an initiative petition submitted in 2003, “03INDP” for a proposed bill entitled “An Act Requiring the State of Alaska to Vote on Obtaining Alaskan Independence, if Legally Possible, or to Seek Changes in Existing Law and Constitutional Provisions to Authorize, and then Obtain, Independence.” We reviewed the earlier initiative application and recommended that the prior lieutenant governor deny certification of that application in 2003 Inf. Op. Att’y Gen. (Jun. 10; 663-03-0169). The lieutenant governor denied certification, and the sponsors challenged the denial in state court. The Alaska Supreme Court upheld the denial of certification in *Kohlhass v. State, Office of the Lieutenant Governor*, 147 P.3d 714 (Alaska 2006).

The sponsors have made changes to the bill to be initiated in the current application; however, these changes are not sufficient to remedy the deficiency in the bill that we identified in our review of the earlier, similar initiative application. The proposed bill still calls for Alaska’s secession from the United States, which is clearly unconstitutional, and therefore a prohibited subject for the initiative.

Under these circumstances we recommend that you do not certify the application.

II. SUMMARY OF THE PROPOSED BILL

As the proposed bill is brief, we set it out in full:

Be it enacted by the People of the State of Alaska:

(1) At the next regular election, the following question shall be presented to the voters of the State of Alaska for approval or rejection:

Shall the State of Alaska seek changes in existing law and Constitutional provisions to authorize it to obtain independence from the United States of America?

(2) If this question is not answered affirmatively when this question is presented to the voters, then this question shall be placed before the voters of Alaska every ten years thereafter.

(3) The provisions of this Act are independent and severable, and if any provisions of this Act, or the applicability of any provision to any person or circumstance, shall be held to be invalid by a court of competent jurisdiction, the remainder of this Act shall not be affected and shall be given effect to the fullest extent practicable.

The difference between the current proposed bill and the bill proposed by initiative 03 INDP, is that 03 INDP required that this question be presented to the voters:

Shall the State of Alaska obtain independence from the United States of America, and become an independent nation, if such independence is legally possible, and if such independence is not legally possible under present law, shall the State of Alaska seek changes in existing law and Constitutional provisions to authorize such independence and then obtain independence?

The question to be presented to the voters by the current initiative is:

Shall the State of Alaska seek changes in existing law and Constitutional provisions to authorize it to obtain independence from the United States of America?

III. ANALYSIS

Under AS 15.45.070, within 60 calendar days after the date the application is received, the lieutenant governor is required to review an application for a proposed initiative and either “certify it or notify the initiative committee of the grounds for denial.” The grounds for denial of an application are that (1) the proposed bill is not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors. AS 15.45.080. The date 60 calendar days after receipt of this initiative application is March 30, 2007.

A. The Form of the Application

The form of an initiative application is prescribed in AS 15.45.030, which provides:

The application must include the

(1) proposed bill;

(2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and

(3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

The application meets the first and third requirements. With respect to the second requirement, the Division of Elections within your office determines whether the application contains the signatures, addresses, and identifiers of not less than 100 qualified voters. The application contains a statement that the sponsors signed the application with the proposed bill attached.

B. The Form of the Proposed Bill

The form of a proposed initiative bill is prescribed by AS 15.45.040, which requires that (1) the bill be confined to one subject; (2) the subject be expressed in the title; (3) the enacting clause state, “Be it enacted by the People of the State of Alaska”;

and (4) the bill not include prohibited subjects. The prohibited subjects—dedication of revenue, appropriations, the creation of courts or the definition of their jurisdiction, rules of court, and local or special legislation—are listed in AS 15.45.010 and in Article XI, Section 7 of the Alaska Constitution.¹ In addition, a proposed bill may not seek to enact a clearly unconstitutional measure.²

Here, the measure to be enacted by initiative has a clearly unconstitutional objective. The Court in *Kohlhaas v. State, Office of the Lieutenant Governor*, 147 P.3d 718 held that secession is clearly unconstitutional. The bill proposed by the initiative application calls for Alaska to seek changes in “existing law and Constitutional provisions” to allow it to secede from the United States. The Court in *Kohlhaas* held that “[w]hen the forty-nine-star flag was first raised at Juneau, we Alaskans committed ourselves to that indestructible Union, for good or ill, in perpetuity. To suggest otherwise would disparage the republican character of the National Government.” *Id.* at 720. Secession is clearly unconstitutional and to seek changes in the law to allow a state to secede from the indestructible Union is also unconstitutional.³

IV. CONCLUSION

For the above reasons, we find that the proposed bill is not in the proper form, and therefore recommend that you do not certify this initiative application.

If you decide to deny certification of the initiative application, 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 set in motion a 30-day appeal period during which these persons must contest your action or be forever barred. *McAlpine v. University of Alaska*, 762 P.2d 81, 86 (Alaska 1988).

Please contact me if we can be of further assistance to you on this matter.

¹ Constitutional amendments are also a prohibited subject. *Starr v. Hagglund*, 374 P.2d 316, 317 n.2 (Alaska 1962).

² *Kohlhaas v. State, Lieutenant Governor*, 147 P.3d 714 (Alaska 2006).

³ There is also an argument that this application should be disapproved because the measure proposed by the initiative proposes only an ineffectual advisory measure. The proposed measure amounts only to an expression of popular will that officials of the State of Alaska seek changes to the Constitution to allow Alaska to secede from the Union – an action that is unconstitutional, and which therefore cannot be given legal effect. Thus, the initiative proposes only an ineffective advisory measure, rather than enactment of a law, and is not a proper subject for initiative under the Alaska Constitution, Article XI, Section 1. *Yute Air v. McAlpine*, 698 P.2d 1173, 1182 (Alaska 1985).

Hon. Sean Parnell
A.G. file no.: 663-07-0122

February 20, 2007
Page 5

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cc: Whitney Brewster, Director
Division of Elections
Office of the Lieutenant Governor