

LEGAL SERVICES

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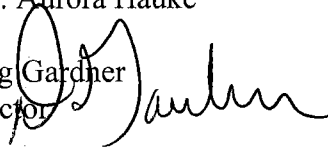
State Capitol
Juneau, Alaska 99801-1182
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MEMORANDUM

May 22, 2015

SUBJECT: Medicaid language in HB 2001
(Work Order No. 29-LS0960\H)

TO: Representative Chris Tuck
House Minority Leader
Attn: Aurora Hauke

FROM: Doug Gardner
Director 

Ms. Hauke asked whether the language in HB 2001 (Work Order No. 29-LS0960\H), p. 15, lines 24 - 27, consisting of intent language restricting the use by the governor of money in the operating budget for FY 2016, to expand Medicaid is: (1) constitutional and (2) subject to veto by the governor. Please be advised that it is my opinion that this language is likely unconstitutional, and is not an "item", and therefore may not be vetoed by the governor.

1). Under art. II, sec. 13, Constitution of the State of Alaska, "bills for appropriations shall be confined to appropriations." The legislature's power to attach intent or qualifying language to an appropriation has significant limits. In *Alaska Legislative Council v. Knowles*, 21 P.3d 367 (Alaska 2001), the Alaska Supreme Court established a five-part test for substantive contingencies related to appropriations:

[T]he qualifying language must be the minimum necessary to explain the Legislature's intent regarding how the money appropriated is to be spent. It must not administer the program of expenditures. It must not enact law or amend existing law. It must not extend beyond the life of the appropriation. Finally, the language must be germane, that is appropriate, to an appropriations bill.

Id. at 377. Language that falls outside this standard is unenforceable because it violates the confinement clause of the Alaska Constitution. The intent language you asked about may have the effect of amending existing law. In this regard the Department of Health and Social Services (DHSS) is currently authorized, under AS 47.05.010(5), "to cooperate with the federal government in matters of mutual concern pertaining to adult public assistance, the Alaska temporary assistance program, and other forms of public assistance." DHSS is also authorized, under AS 47.07.040, to "make those arrangements or regulatory changes, not inconsistent with law, as may be required under federal law to

obtain and retain approval of the United States Department of Health and Human Services to secure for the state the optimum federal payment under the provisions of 42 U.S.C. § 1396 - 1396p (Title XIX, Social Security Act, Medical Assistance)." Under AS 47.07.060, the Department of Administration is directed to "accept and receive all grants of money awarded to the state under 42 U.S.C. § 1396 - 1396p (Title XIX, Social Security Act, Medical Assistance)." These funds are deposited in a special account in the general fund and can only be used for medical assistance under chapter 47.07. These provisions, in addition to AS 47.07.020(a), AS 37.07.080(e) and (h), and current appropriations, appear to provide sufficient authority for the governor and DHSS to accept federal funding for Medicaid expansion, which the proposed language would amend.

2). You have asked whether the governor can veto intent language in a budget bill. The short answer to your question is no.

Under art. II, sec. 15 of the Constitution of the State of Alaska, the governor has the power of veto:

The governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills. He shall return any vetoed bill, with a statement of his objections, to the house of origin.

The Alaska Supreme Court considered the governor's power to strike or reduce items in appropriation bills in *Alaska Legislative Council v. Knowles*.¹

In *Knowles*, the legislature challenged then-Governor Knowles's veto of intent language in five appropriations.² The Court first looked at whether the stricken language was an "item" within art. II, sec. 15:

Based on the language of our constitution, the historical purposes of the item veto, and the pertinent public policy considerations, we now define "item" as "a sum of money dedicated to a particular purpose."

....

[A]n "item" must include a sum of money. Likewise, a passage that does not include a "sum of money dedicated to a particular purpose" is not an "item" which the governor can strike or reduce. Therefore, a veto that does not delete or reduce the amount of money appropriated is not a valid exercise of the power article II, section 15 grants.³

¹ 21 P.3d 367 (Alaska 2001).

² *Id.* at 369.

³ *Id.* at 371 - 373.

Representative Chris Tuck
May 22, 2015
Page 3

The Court ultimately concluded that the vetoed intent language was not an "item" subject to the item veto because it did not appropriate a sum of money dedicated to a particular purpose.⁴ The Court noted that allowing the governor to veto language like this would give the governor the power to edit appropriations, not just to strike or reduce appropriations.⁵

Accordingly, the governor has the power to strike or reduce appropriation items, but the governor cannot add money or strike or amend the language of an appropriation.

If I may be of further assistance, please advise.

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⁴ *Id.* at 374.

⁵ *Id.* The Court ultimately concluded that the language at issue was unconstitutional intent language under the Confinement Clause. *Id.* However, the Court noted that even if the language had been constitutional, the language would still not be an "item" subject to the governor's item veto power. *Id.*