

## ADVISORY OPINION DECISION

### Alaska Public Offices Commission

Advisory Opinion: AO 21-09  
Commission Meeting Held: February 28, 2022  
Commission Action: By a vote of 3-2 the Commission does not adopt a modified version of Staff's recommended decision.

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In 2006, Alaska's citizenry set individual contribution limits to candidates and groups at \$500.00.<sup>1</sup> The group-to-candidate limit was \$1,000.00.<sup>2</sup> In 2021, the Ninth Circuit held that the State failed to meet its burden of showing that these limits were closely drawn to meet their objectives and were too low. As a result, the contribution limits violated the First Amendment's free speech protections.<sup>3</sup>

Later the same year, on October 29, 2021, Ms. Paula DeLaiarro requested an Advisory Opinion from The Alaska Public Offices Commission (Commission) regarding individual contribution limits and the impact of the Ninth Circuit decision on those limits. She requested the following:

Given that I have made contributions to candidates and groups in the past and that I plan to make contributions to candidates and groups in the future, I am seeking guidance with respect to the recent Ninth Circuit Court of Appeals ruling in *Thompson v. Hebdon*. Specifically, I would like to determine if I may give an unlimited amount to candidates or groups in

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<sup>1</sup> AS 15.13.070(b)(1).

<sup>2</sup> AS 15.13.070(b)(1).

<sup>3</sup> 7 F.4th 811, 823-824 (9th Cir. 2021).

the future. If I may not contribute an unlimited amount, how much may I contribute to a candidate or group in the future?

On November 3, 2021, Commission Staff provided Ms. DeLaiarro a draft advisory opinion which recommended that, considering the Ninth Circuit decision, the Commission revive prior-enacted contribution limits from 2003 that were not addressed by the Court in *Thompson v. Hebdon*. The revived individual limits from 2003 were \$1,000.00. Commission Staff also recommended indexing the revived limits at \$500.00 for inflation. Under Staff's recommendation, the Commission—and not the legislature—would set the following limits:

- \$1,500.00 for individuals making contributions to candidates;
- \$1,500.00 for individuals making contributions to groups; and
- \$3,000.00 for groups making contributions to candidates.

After careful deliberation, the Commission declines to revive the contribution limits adopted by Alaska's Legislature in 2003.<sup>4</sup> The Commission further declines to index the 2003 contribution limits for inflation.

Ultimately, the Commission decided not to apply the revival doctrine in this instance, which states that when a statute is deemed unconstitutional, the preceding

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<sup>4</sup> Three Commission members (Hancock, LaSota, and Lawrence) were in favor of reinstating the 2003 contribution limits without indexing the limits for inflation. Two Commissioners were not in favor of reviving contribution limits set in 2003, in part because they determined this is a core function of the Alaska Legislature.

statute has full force and effect as if the superseding law never existed.<sup>5</sup> Application of the revival doctrine here would reestablish contribution limits passed by the Alaska Legislature almost nineteen years ago.<sup>6</sup> Moreover, the doctrine of revival in this context has not been specifically adopted by Alaska Courts or the Legislature.

The Alaska Legislature is fully aware of the Court's decision in *Thompson v. Hebdon* and the impact the opinion has on the First amendment rights of the citizens in Alaska. To provide Alaskans much-needed clarity on this question, the Commission implores Alaska's Legislators to revisit these campaign finance contribution limits to balance the Federal ruling in *Thompson v Hebdon* with the desire of Alaska voters.

Pursuant to AS 15.13.374(d), the approval of a draft advisory opinion may only be approved upon the affirmative vote of four members of the commission. Staff's draft advisory opinion did not receive four affirmative votes and it is therefore disapproved. This decision is a final Commission decision and may be appealed to the superior court under AS 44.62.560.

SO ORDERED THIS 3rd day of March 2022

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<sup>5</sup> See *Oxfeld v. Sorrell*, 2008 WL 4642254 \* 3 (D. Vt. 2008)(restored higher contribution limits from a previous law even though the State courts had yet to apply the revival doctrine). But See *Denardo v. State*, 741 P.2d 1197, 1199 (Alaska 1987)(allowed Division of Elections to pass a regulation adopting the prior version of a law when the Legislature and Executive Branch failed to timely adopt a new law).

<sup>6</sup> 2003 Alaska Sess. Laws ch. 108.

*Anne Helzer*

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Anne Helzer, Chair

Alaska Public Offices Commission

I hereby certify that on this date, I caused a true and correct copy of the foregoing to be delivered to:	
Paula DeLaiarro 8401 Pioneer Drive Anchorage, AK 99504 <a href="mailto:Paula.delaiarro@gmail.com">Paula.delaiarro@gmail.com</a>	<input checked="" type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Email

*Paule Ferguson*      03/03/2022

Law Office Assistant      Date

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