

Requested by: Council Member Menard
Postponed on February 27, 2006 to April 24, 2006
Adopted: April 24, 2006

Vote: Ewing, Menard, Metiva, O'Neil & Straub in favor; Cox opposed

**CITY OF WASILLA
RESOLUTION SERIAL NO. 06-14**

A RESOLUTION OF THE WASILLA CITY COUNCIL SUPPORTING AND ENCOURAGING THE PASSAGE OF MATANUSKA-SUSITNA BOROUGH SCHOOL DISTRICT BONDS TO BE VOTED ON AT THE UPCOMING SPECIAL BOROUGH ELECTION OF MAY 2, 2006.

WHEREAS, over the past several years the Matanuska-Susitna Borough has experienced exceptional population growth; and

WHEREAS, the Matanuska-Susitna Borough School District has limited space in their elementary, middle and high schools and continue to struggle to find room for students of all ages to attend class;

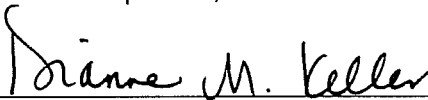
WHEREAS, the Matanuska-Susitna Borough called for a special election to be held on May 2, 2006 in which 39.7 million dollars will be available to the Matanuska-Susitna Borough School District upon passage; and

WHEREAS, in the 39.7 million dollars available, 5.5 million will be for the Wasilla Middle School expansion and the third phase of the Wasilla High School completion; and

WHEREAS, once passed by the voters, this funding would allow for the completion and expansion of schools in the Valley by the 2008 school year.

NOW THEREFORE BE IT RESOLVED that the Wasilla City Council, supports and encourages the passage of Matanuska-Susitna Borough School District Bonds at the upcoming Matanuska-Susitna Borough Special Election to be held on May 2, 2006.

ADOPTED by the Wasilla City Council on April 24, 2006.



DIANNE M. KELLER, Mayor

ATTEST:



KRISTIE SMITHERS, MMC
City Clerk

[SEAL]



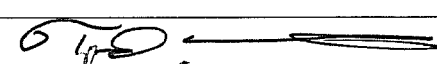
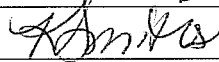
**CITY OF WASILLA
LEGISLATION STAFF REPORT**

**RE: RESOLUTION SERIAL NO. 06-14, SUPPORT AND ENCOURAGING THE
PASSAGE OF BOROUGH SCHOOL DISTRICT BONDS TO BE VOTED ON AT THE
UPCOMING SPECIAL BOROUGH ELECTION OF MAY 2, 2006.**

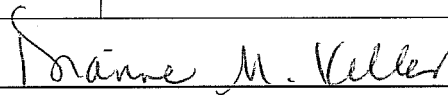
Agenda of: April 24, 2006

Date: April 12, 2006

Originator: Kristie Smithers, MMC, Wasilla City Clerk

Route to:	Department	Signature/Date
	Police	
	Recreational and Cultural Services Library, Museum	
	Public Works Planning	
X	Finance *signature required	
X	Clerk	

REVIEWED BY MAYOR DIANNE M. KELLER:



FISCAL IMPACT: yes\$ or no

Funds Available yes no

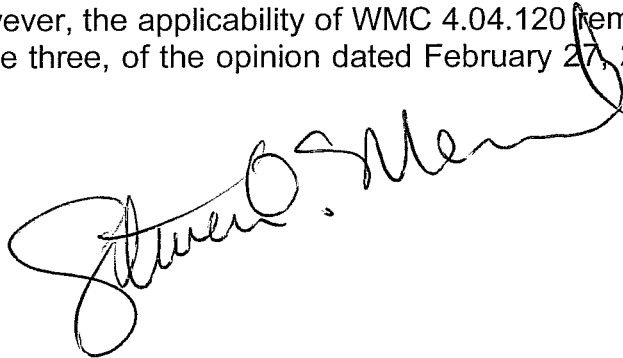
Account name/number:

Attachments:

SUMMARY STATEMENT:

At the February 27, 2006, Regular City Council meeting the City Council postponed Resolution Serial No. 06-14 to April 24, 2006. Council Member Menard contacted APOC and I have discussed this issue further with Thomas Klinkner our City Attorney.

APOC expressed that the consideration of Resolution Serial No. 06-14 is not subject to State Campaign Contribution laws, however, the applicability of WMC 4.04.120 remains unclear. Please refer to part three, page three, of the opinion dated February 27, 2006 from our City Attorney (attached).



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February 27, 2006

via EMAIL ONLY

Ms. Jamie Newman
Deputy Clerk
City of Wasilla
290 East Heming Avenue
Wasilla, Alaska 99654

Re: Resolution Serial No. 06-14, Supporting Approval of Matanuska-Susitna Borough School Bond Proposition
BHBC File No. 505,780.96

Dear Jamie:

You asked that I respond to a citizen inquiry whether the Council's adoption of Resolution Serial No. 06-14, stating the Council's support for the passage of a Matanuska-Susitna Borough ("Borough") school bond proposition at the Borough's May 2, 2006, special election, violates WMC 4.04.120, which prohibits the use of public moneys to promote passage of ballot propositions.

I conclude that Resolution Serial No. 06-14 clearly is subject to AS 15.13.145, which requires that the Council appropriate by ordinance the funds that are to be expended for the City resources that will be used in connection with the consideration and adoption of the resolution, and that the City report those expenditures to the Alaska Public Offices Commission ("APOC") as election campaign expenditures under AS Chapter 13.15. I also conclude that it is unclear whether WMC 4.04.120 applies to efforts to influence a Borough election, and thus prohibits the adoption of Resolution Serial No. 06-14.

I. Introduction.

Resolution Serial No. 06-14 has been submitted by Council Member Menard for the Council's consideration at its February 27, 2006, meeting. The resolution recites that the Borough has experienced exceptional growth; that the Borough continues to struggle to find room for students of all ages; and that the Borough has called a special election for May 2, 2006,

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at which the voters will be asked to approve \$39.7 million in school bonds of which \$5.5 million would be for improvements to Wasilla Middle School and Wasilla High School. Based on these recitals, it is resolved that the Council "supports and encourages the passage of Matanuska-Susitna Borough School District Bonds at the upcoming Matanuska-Susitna Borough Special Election..."

2. *State Law Requirements.*

Under AS 29.35.250, a city inside a borough, such as the City, "may exercise any power not otherwise prohibited by law." Thus, the Council may adopt Resolution Serial No. 06-14 unless it is "otherwise prohibited by law" from doing so.

The state's election campaign finance law, AS Chapter 15.13, specifically addresses the use of the City's money in election campaigns. AS 15.13.145(b) permits the use of City funds to influence the outcome of an election concerning a ballot proposition or question only if the funds have been specifically appropriated for that purpose by a City ordinance. Under AS 15.13.145(d), any expenditure so authorized shall be reported to APOC in the manner prescribed for the reporting of election campaign expenditures generally.

APOC applied AS 15.13.145 in detail to the issue of a state official's expression of support for a ballot proposition in a 1999 guidance memorandum to the Governor's Office. In this guidance, APOC emphasized two points. First, AS 15.13 restricts only the use of public funds to influence the outcome of an election, and not other conduct of public officials. Second, AS 15.13 does not apply to a public official's expression of the official's own position on a ballot measure, but only to the official's urging of others to vote for or against the measure. Both the use of public funds and the urging of others to vote in a particular way must be present for the requirements in AS 15.13.145 to apply.

Because AS 15.13 applies only to the use of public money to influence the outcome of an election, "[a]s a result, public officials are not subject to [AS 15.13.145] if they do not use state resources—for example, if an action to influence the election did not incur any cost or if it was paid from personal or donated funds."¹ However, "state resources" are defined broadly for this purpose to include "...all state resources including the following: state funds, travel vouchers, reimbursement for lodging, meals, per diem, staff time, accountable office allowance purchased items (e.g., stationary), phones, faxes, copiers, computers, press releases, state facilities, etc."² Clearly, some City resources, as APOC broadly defines the term, will be used in connection with the Council's consideration and action on Resolution Serial No. 06-14. For example, City resources will be used for the supplies, equipment and employee time involved in preparing,

¹ Commission Guidance to David Ramseur, Deputy Chief of Staff, State of Alaska Office of the Governor, June 9, 1999.

² *Id.*

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copying and distributing the resolution, advertising it as an item on the Council agenda, recording the Council's action on the resolution, publishing notice of Council action on the resolution, retaining the adopted resolution in the City's records, and making copies of the adopted resolution available to the public. While the monetary value of these City resources may not be large, they nonetheless trigger the requirements of AS 15.13.145(b) that funds for those resources be appropriated by ordinance, and of AS 15.13.145(d) that the use of those resources be reported to APOC as an election campaign expenditure.

APOC also distinguished between statements made by an official in carrying out the official's usual and customary duties in communicating with the public, which it would not treat as an action to influence an election, and urging a vote for or against a measure, which it would treat as an action to influence an election:

In carrying out his or her usual and customary duties in communicating with the public, an official is free to state his or her position on the [ballot] question. However, the official may not expressly urge a person to vote for or against the measure. Assuming this is the case [i.e., the official states only the official's own position, and does not urge a vote for or against the measure], no campaign restrictions or disclosure requirements are triggered. The campaign disclosure law does not apply.

In stating that the Council "encourages the passage of" the school bond proposition, Resolution Serial No. 06-14 clearly urges a vote in favor of that bond proposition. Thus, APOC would view Resolution Serial No. 06-14 as action to influence an election, and not merely a communication by a public official in carrying out the official's usual and customary duties.

The analysis above indicates that the requirements of AS 15.13.145 apply to Resolution Serial No. 06-14. Before adopting the resolution, the Council must appropriate by ordinance the funds that are to be expended for the City resources that will be used in connection with the consideration and adoption of the resolution, and those expenditures must be reported to APOC as election campaign expenditures under AS Chapter 13.15.

3. *WMC 4.04.120.*

In addition to the requirements in AS 15.13.145 discussed above, AS 15.13.010(c) authorizes the City to adopt more restrictive regulations of campaign contributions and expenditures in municipal elections:

(c) This chapter does not prohibit a municipality from regulating by ordinance election campaign contributions and expenditures in municipal elections, or from regulating those campaign contributions and expenditures more strictly than provided in this chapter.

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As contemplated by AS 15.13.010(c), the City has enacted WMC 4.04.120, which provides in relevant part:

**4.04.120 Use of public moneys to promote passage of ballot propositions—
Prohibited.**

A. The use of public moneys, or facilities, equipment or supplies purchased with public moneys, and services of public employees in kind, to promote the passage of ballot propositions including public expenditures, appropriations or bond issues is prohibited.

B. The term “promote” means an attempt to influence, whether affirmatively or negatively, the vote of the people upon ballot propositions or bond issues....

In contrast to the requirements in AS 15.13.145 of appropriation by ordinance and reporting to APOC of City funds expended to influence the outcome of an election on a ballot proposition, WMC 4.04.120 imposes a strict ban on such expenditures.

However, while it is clear that the ban in WMC 4.04.120 would apply to a City expenditure to influence the outcome of a *City* election on a ballot proposition, it is not clear whether the ban extends to a City expenditure to influence the outcome of a *Borough* election on a ballot proposition. While the terms of WMC 4.04.120 do not explicitly confine its operation to City elections, WMC Title 4, in which it is located, otherwise appears intended to govern only the conduct of City elections. Moreover, the authority in AS 15.13.010(c) for a City provision such as WMC 4.04.120 that is more restrictive than state law, speaks of a municipality regulating campaign contributions and expenditures in municipal elections. It would be reasonable to interpret the terms “municipality” and “municipal” in AS 15.13.010(c) to refer to the same entity, so that AS 15.13.010(c) authorizes the *City* to regulate campaign contributions and expenditures in *City* elections. Interpreted in this manner, AS 15.13.010(c) would permit the City to impose more restrictive regulations on campaign expenditures in City elections, but not on campaign expenditures in Borough elections. Thus, WMC 4.04.120 would not apply to Resolution Serial No. 06-14.

However, it also is possible that a court could determine that the authority in AS 15.13.010(c) for more restrictive City regulation of campaign expenditures does authorize more restrictive City regulation of City expenditures to influence the Borough school bond election. Such an interpretation would be consistent with the fact that courts in other jurisdictions that have addressed this issue, while applying different statutory provisions, consistently disfavor the practice of expending public funds to influence elections on general public policy grounds. For example, the Supreme Judicial Court of Massachusetts held that a state statute prohibited a city from expending funds to advocate the adoption of a ballot measure in a state election, but also

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concluded that the First Amendment did not protect the city's expenditure decision. The court focused on the public interest in fair elections, and what it perceived to be the basic unfairness of expending tax dollars to advocate an election result with which some taxpayers would not agree:

The people have expressed a strong interest that the Legislature have the authority to determine what, if any, material will be disseminated on a referendum proposal. The Legislature may decide, as it has, that fairness in the election process is best achieved by a direction that political subdivisions of the State maintain a "hands off" policy. It may further decide that the State government and its various subdivisions should not use public funds to instruct the people, the ultimate authority, how they should vote. That determination avoids the possibility of a babel of municipal huckstering and reserves the financing of public debate for nongovernmental agencies and individuals. Fairness and the appearance of fairness are assured by a prohibition against using public tax revenues to advocate a position which certain taxpayers oppose....

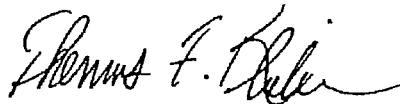
Assuming that the Commonwealth has no right to restrict such advocacy where there is no opposition from any affected citizen, the Commonwealth has a compelling interest in restricting such advocacy where the affected citizenry are not in unanimity. The Commonwealth has an interest in assuring that a dissenting minority of taxpayers is not compelled to finance the expression on an election issue of views with which they disagree.³

Because the correct interpretation of AS 15.13.010(c) and WMC 4.04.120 is uncertain, I cannot conclude that the adoption of Resolution Serial No. 06-14 is permitted under WMC 4.04.120.

Please let me know if I may be of further assistance in this matter.

Yours truly,

BIRCH, HORTON, BITTNER and CHEROT



Thomas F. Klinkner

³ *Anderson v. City of Boston*, 380 N.E.2d 628, 638-639 (Mass. 1978) (footnotes and citations omitted).