

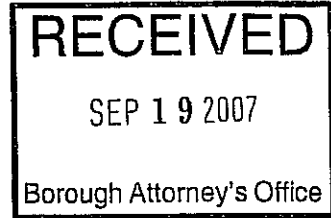
SCHULZ & SKILES

Attorneys At Law

307 Bawden Street, Ketchikan, Alaska 99901

Ph. (907) 225-9401; Fax (907) 225-5513

Bryan Schulz & Amanda Skiles



September 19, 2007

VIA HAND DELIVERY

Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901
Attn. Scott Brandt-Erichsen, Borough Atty.

Re: Proposition 1
Our File: 5677

Dear Mr. Brandt-Erichsen:

I have been retained to address the actions of the borough assembly as reported in the Ketchikan Daily News on September 18, 2007, at page 3. Therein, it is reported that the borough manager has agreed to draft a resolution in opposition to Proposition 1. Neither I nor my client was present at the meeting so we are somewhat in the dark as to what prompted the borough manager's agreement to draft the described resolution. That is, we are not sure whether the resolution is or was the manager's idea, the assembly's idea, the idea of the four named assembly members, or whether some other impetus prompted the manager's promise to draft the resolution for consideration. For purposes of this particular letter I do not think that it much matters.

For the reasons set forth herein, it is my view that the assembly's adoption of such a resolution would be an abuse of power. It is my further view that the assembly's present contemplation of such a resolution represents an abuse of power, whether or not the resolution is ever adopted by the assembly or again considered by the assembly.

While subjected to procedural and constitutional safeguards, initiative petitions are recognized in Alaska as a valid exercise of the citizens' right to enact such laws as they deem to be in their best interest. One can imagine any number of contexts in which citizens of this State or residents of this municipality may feel it necessary to bypass the legislature or the assembly and go straight to the electorate for redress of perceived wrongs or to take needed action. One such context may be that the legislative body is simply ignoring the public's concerns.

Regardless of the context in which Proposition 1 is being brought before the voters on October 2nd, it is clear that the proposition's sponsors have met the procedural prerequisites to the clerk's satisfaction. It is also fairly clear that the proposition has attracted a substantial amount of interest, both pro and con. Until Monday night, neither the assembly nor the council had intimated an official position with respect to Proposition 1, and for good reason.

Laws passed by the citizens via the initiative process are afforded special protections e.g. pursuant to AS 29.26.190(a) "The effect of an ordinance or resolution may not be modified or negated within two years after its effective date if adopted in an initiative election or if adopted after a petition that contains substantially the same measure has been filed." This means that if Proposition 1 is approved by the residents of Ketchikan the borough assembly could not repeal the ordinance called for in Proposition 1 for a period of two years. Undoubtedly the members of the borough assembly are aware of this restriction.

Pursuant to the borough's Code Of Ordinances at 5.37.030(j): "The borough may prepare and disseminate general, objective information about the issues to be voted on in local elections. Such material shall be devoid of biased statements or slant and, where appropriate, may contain pro and con statements of equal weight and value. The borough may expend funds to influence the outcome of an election only in accordance with the limitations in AS 15.13.145 as it may be modified from time to time." Pursuant to AS 15.13.145: "Money held by a [municipality] ... may be used to influence the outcome of an election concerning a ballot proposition or question, but only if the funds have been specifically appropriated for that purpose by ordinance." Before a municipality may even take a position concerning a ballot proposition it must first appropriate funds specifically allocated for support of the position to be taken. There is no indication that funds have been specifically appropriated to oppose Proposition 1. Undoubtedly, the members of the borough assembly are aware of these restrictions and that no funds have been specifically appropriated.

The borough manager is also subject to some regulation where petitions such as Proposition 1 are concerned. Pursuant to borough ordinance 5.37.030(i): "Appointed officials may not take an active part in a political campaign or other matter to be brought before the voters when on duty." However, as set forth at the outset of this letter it is not clear from the newspaper article what prompted the borough manager's agreement to draft the resolution in opposition to Proposition 1.

The overall purpose of the ordinances and statutes quoted above seems to be to shield the citizens from the influence and power of the governing body. Citizens need not worry that laws sought by them to be enacted will simply be undone by an opposing governing body. Citizens need not worry that they will have to overcome the resources and influence of the opposing members of a governing body.

In what does appear to be an effort to thwart the law, the borough assembly, or a majority of its members, or the borough manager, all while acting in their official capacities, have made clear their opposition to Proposition 1. The article clearly presents as though the borough assembly itself opposes Proposition 1 (whether that opposition is unanimous or not is less clear). That publicly stated and official opposition would constitute a clear abuse of power if the discussed resolution is brought to the table on October 1st and passed. However, I believe that the power has already been abused because of the chilling effect and influence that the public pronouncement is likely to have and I believe intended to have on the upcoming vote. I believe that the intent of the public announcement was to mislead the voters into believing that the assembly would simply repeal

Proposition 1 if passed. There are likely to be a significant number of voters who are now unwilling to vote because of the misperception that the assembly can simply undo whatever the citizens enact. Equally, there may be a significant number of voters who are unduly influenced by the borough's unlawful position on this matter. In either event, opposition interests gain an advantage through the abusive power exercised by the assembly on Monday night. It is power prohibited by both the letter and the spirit of the law.

Moreover, during the circulation of the petition in the sponsors' efforts to garner the required signatures, signatures of both borough and city employees were sought. At least one of the petition's sponsors was met with the incorrect belief on the part of some municipal employees that they "could not take part in the petition" because of their status as municipal employees. One of the petition's sponsors immediately approached the assembly and the borough mayor for help in redressing this misperception on the part of municipal employees. So far as the sponsor is aware no action was taken and the misperception continues to this day. The sponsor also approached the city mayor with the problem and sought his help. To the best of the sponsor's knowledge no action was taken to correct the misperception.

I believe that the municipality employees' confusion over their own rights of participation coupled with the borough assembly's flagrant disregard of the limitations of their own role compounds the problem. The combined chilling effect, considering the number of municipal employees and the publicity with which the borough has taken a position, is substantial.

We ask that you bring these issues to the assembly's immediate attention before further abuses take place. The borough should publicly renounce any intent to take a position on Proposition 1 and municipal employees ought to be given affirmative assurance of their right to participate in the electoral process.

Very truly yours,



Bryan T. Schulz

Cc: City Mayor