

# LEGAL SERVICES

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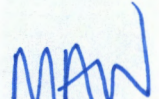
State Capitol  
Juneau, Alaska 99801-1182  
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## MEMORANDUM

June 25, 2019

**SUBJECT:** Special session location (Work Order No. 31-LS1070)

**TO:** Senator Shelley Hughes  
Attn: Buddy Whitt

**FROM:** Megan A. Wallace  
Director 

You asked what authority the presiding officers have to change the location of the special session to Juneau, despite the location selected by the governor in his most recent special session proclamation.<sup>1</sup>

Article II, sec. 9, Constitution of the State of Alaska, provides:

**SECTION 9. Special Sessions.** Special sessions may be called by the governor or by vote of two-thirds of the legislators. The vote may be conducted by the legislative council or as prescribed by law. At special sessions called by the governor, legislation shall be limited to subjects designated in his proclamation calling the session, to subjects presented by him, and the reconsideration of bills vetoed by him after adjournment of the last regular session. Special sessions are limited to thirty days.

The constitution does not provide for the governor to control the location of a special session. AS 24.05.100(b) allows for the convening of a special session at a location other than the capital and for the naming of that location. AS 24.05.100(b) states:

(b) A special session may be held at any location in the state. If a special session called [*by the governor*] under (a)(1) of this section is to be convened at a location other than at the capital, **the governor shall designate the location in the proclamation.** If a special session called [*by the legislature*] under (a)(2) of this section is to be convened at a location other than at the capital, **the presiding officers shall agree to and designate the location in the poll conducted of the members of both houses.** [Emphasis added.]<sup>[2]</sup>

<sup>1</sup> On June 13, 2019, the governor issued a proclamation for the legislature to convene the Second Special Session in Wasilla at the suggested venue of the Wasilla Middle School.

<sup>2</sup> AS 24.05.100(b) was enacted in 1982, the same year the voters passed the appropriation limits in art. IX, sec. 16, and art. XV, sec. 26 (appropriations for relocation of the capital).

A governor has never called the legislature into a special session in a location other than Juneau.<sup>3</sup> AS 24.05.100(b) does not, and likely cannot, give up the legislature's power over its sessions beyond that required by the constitution, particularly when the location involves substantial cost and logistical considerations. Therefore, it is very possible a court could find the mandate in AS 24.05.100(b), that the governor designate the location of a special session called outside of the capital, unconstitutional.

AS 24.05.100(b) may be unconstitutional either because (1) it goes beyond the constitutional requirements for calling a special session under art. II, sec. 9 of the state constitution, (2) the legislature must meet in the capital unless it is impossible to do so under art. XV, sec. 20, or (3) the location of a special session is a matter that can be ultimately decided only by the legislature under the separation of powers doctrine.

1. The constitution is silent as to special session locations.

While the governor is statutorily required under AS 24.05.100(b) to designate the location of a special session if outside the capital, the governor does not have the constitutional power to compel the legislature to meet in a location other than the capital. Article II, sec. 9, Constitution of the State of Alaska provides:

Special sessions may be called by the governor or by vote of two-thirds of the legislators. The vote may be conducted by the legislative council or as prescribed by law. At special sessions called by the governor, legislation shall be limited to subjects designated in his proclamation calling the session, to subjects presented by him, and the reconsideration of bills vetoed by him after adjournment of the last regular session. Special sessions are limited to thirty days.

The constitution gives the governor the power to call the legislature into special session and to limit the subjects to those presented by the governor. The Alaska Supreme Court has previously narrowly construed shared executive and legislative powers under the constitution. After finding that the appointment of executive officers is an executive function and that confirmation by the legislature of the appointees is a specific attribute of the appointive power of the executive,<sup>4</sup> the Court held, art. III, secs. 25 and 26 of the Constitution marked the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government.<sup>5</sup>

Based on that reasoning, a court could similarly conclude that the location of the legislative sessions is a matter of legislative power, and that art. II, sec. 9, sets out the full

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<sup>3</sup> All three special sessions that have occurred in Anchorage were initiated by the legislature.

<sup>4</sup> *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

<sup>5</sup> *Id.* 6 - 7.

limit of the governor's power to call the legislature into special session; namely the power to call the legislature in and limit the subjects considered in that session. Any attempt by the governor to designate and compel a location other than the capital would be beyond the powers granted to the governor by the constitution.

2. Is the Legislature required to meet in the state capital?

Article XV, sec. 20 of the Constitution of the State of Alaska declares that "[t]he capital of the State of Alaska shall be at Juneau." It is clear that a state capital is the seat of government for that state. Very simply, that is what the word "capital" means.<sup>6</sup> When a seat of government has been established, the principal officers of the executive branch are usually obligated to keep their offices there.<sup>7</sup> Likewise, inherent in the concept of "seat of government" is the requirement that the legislative power be exercised at that place.<sup>8</sup> While provisions may be made for the conduct of legislative sessions outside of the seat of government, this is frequently limited to situations where it is impossible for the legislature to meet there — in cases of war, insurrection, or natural disaster.<sup>9</sup>

The position that the legislature is obligated to exercise its power in the seat of government under Alaska's constitution is reinforced by the discussion of the delegates in considering art. XV, sec. 20. The delegates were not in agreement about whether that provision, if adopted into the constitution, would fix the capital at Juneau as a matter of constitutional law or whether this designation could thereafter be amended statutorily. In considering the alternative of not listing a capital at all in the new constitution, the immediate concern that arose was the question of where the first legislative session would be held if no capital were named.<sup>10</sup> While the delegates never reached agreement as to what the effect of art. XV, sec. 20, would be on the question of a possible future capital move, it is clear the delegates felt they had to make some provision for a seat of government precisely so that the location for the holding of legislative sessions would be fixed. In short, the delegates intended that "capital" would describe the place where legislative sessions were held.

The court, in considering whether the capital could be moved from Juneau by law concluded that it could, whether the law were adopted by initiative or enactment of the

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<sup>6</sup> See *State ex rel Gomez v. Campbell*, 400 P.2d 956 (N.M. 1965).

<sup>7</sup> 81A C.J.S. States 78; *State v. Langlie*, 273 P.2d 464 (Wash. 1954).

<sup>8</sup> 81A C.J.S. States 78; See also *Opinion of Justices*, 476 So.2d 611 (Ala. 1985); *Taylor v. Beckham*, 56 S.W. 177 (Ky. 1900).

<sup>9</sup> See *Taylor*, 56 S.W. at 179.

<sup>10</sup> *Proceedings of the Alaska Constitutional Convention*, Part 4, page 3020.

legislature itself.<sup>11</sup> Amendment of the constitution is not required to accomplish a capital move. That does not, however, mean that legislative sessions do not have to be held in the capital, but only that the capital may be changed by law.

In short, based on the fact that the constitution designates Juneau as the capital (until changed by law) and the delegates' intention that the term "capital" as used in art. XV, sec. 20, means the place where the legislature is to meet, it may be that neither the governor nor the legislature has the power to designate a location outside of Juneau for a legislative session, unless holding the session in the capital is impossible.<sup>12</sup>

3. May the governor designate the location of a special session?

While the governor is required by statute to designate the location of a special session held outside of the capital, the authority to compel the legislature to meet there is a separate question. Assuming that a legislative session may be held outside the state capital under art. II, sec. 9, the question remains as to whether the doctrine of separation of powers prevents the governor from designating, and enforcing the designation of, the location of a special session, particularly when at odds with the legislative needs and will.

Article II, sec. 12 of the constitution states that "the houses of each legislature shall adopt uniform rules of procedure." Based on this grant of authority, Alaska's Supreme Court has held that the legislature is not bound to comply with statutes that deal with matters within the rule-making power of the legislature and that (except as necessary to enforce constitutional rights or requirements) the courts will not, due to the doctrine of separation of powers, provide a remedy for violations of legislative rules.<sup>13</sup> If the doctrine of separation of powers generally prevents the courts from interfering in matters of legislative procedure, then it should prevent the governor from interfering in matters of legislative procedure.<sup>14</sup>

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<sup>11</sup> *Starr v. Hagglund*, 374 P.2d 316 (Alaska 1962). Note that, in deciding that the capital can be moved by law, the court appears to have foreclosed the possibility that the legislature may designate the capital as a matter of procedure.

<sup>12</sup> This does not necessarily mean that legislation adopted at a session held outside the capital would be invalid. That issue involves other considerations and is not addressed in this memorandum.

<sup>13</sup> *Abood v. League of Women Voters*, 743 P.2d 333 (Alaska 1987) ("[I]t is the legislature's prerogative to make, interpret and enforce its own procedural rules and the judiciary cannot compel the legislature to exercise a purely legislative prerogative."). *Accord Mason's Manual of Legislative Procedure*, sec. 15 (2010 ed.) (*Mason's*). *See also Malone v. Meekins*, 650 P.2d 351 (Alaska 1982) (holding that convening of a session by a person other than the presiding officer contrary to statute is a matter of legislative procedure).

<sup>14</sup> The fact that a previous legislature authorized this interference by enacting a statute does not matter. "The body at its preceding meetings does not have the power to bind its

No Alaska court has considered whether the location of a single legislative session is a matter of legislative procedure, although it is clear that venue is a procedural matter in the context of the judiciary.<sup>15</sup> Certainly, the court might be willing to accept the proposition that the place the legislature convenes is procedural, much like questions of venue are procedural for purposes of litigation.<sup>16</sup> On the other hand, *Mason's*, sec. 705 suggests that the location of a session is a matter of law rather than procedure: "When the place of meeting of a legislative body has been designated by law, it may be changed only on legal authority, and no valid meeting can be held nor business conducted at any other than the legally designated place."

Even if the location of the session is not a matter of procedure governed by art. II, sec. 12 of the constitution, other considerations raise the possibility of a violation of separation of powers if the governor designates the location of a special session against the interests of the legislature. The legislature has to provide for and pay for the infrastructure and staff necessary for it to accomplish its business, which may be easier to accomplish in some locations than in others. The legislature's administrative power — its power to provide for chambers, meeting rooms, staff, offices, telephones, voting machines, networking, security, and other necessary services — is essential to its functioning as an independent branch of government. To preserve the legislature's independence, a court may ultimately find it a violation of the separation of powers doctrine to give the governor the power to establish the location of a legislative session.

4. Do the presiding officers have the power to change the special session location?

This is an unprecedented situation. The governor has never called the legislature into special session in a location outside the capital. Because the Alaska Supreme Court has never considered this question, there is a significant litigation risk if the legislature convenes the special session called by the governor in Juneau instead of Wasilla, as designated in the governor's proclamation. The legislature's failure to convene in Wasilla may be challenged by a citizen-taxpayer, a legislator, or any other interested party.

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successors or to put shackles on it that might be cast off only in a particular way." *Mason's*, sec. 15.

<sup>15</sup> *Morrison v. Steiner*, 290 N.E.2d 841 (Ohio 1972). See Rule 3, Alaska Rules of Civil Procedure.

<sup>16</sup> Even assuming that the court were to agree that the place the legislature convenes is a matter of procedure, that does not mean that the legislature may determine the location of holding a session under its rule-making power because that power is subordinate to other specific rules contained in the constitution, including the designation of a capital in art. XV, sec. 20. *Mason's*, sec. 10(3).

Again, it is difficult to predict how a court may decide this issue if faced with it. A court may find that if the legislature wishes to convene in a different location, its remedy is to call itself into special session in another location or adjourn from the governor's special session. On the other hand, a court may find that, as a co-equal branch of government, only the legislature can decide to convene in a location outside the capital, and the governor lacks the power to compel the legislature to meet outside the capital.<sup>17</sup> The outcome of any challenge is more uncertain if the legislature disregards the location selected in the governor's proclamation, does not call itself into special session, and simply convenes in Juneau under the governor's call. For the above reasons, there appears to be less risk for the legislature to convene in Juneau, if it then immediately adjourns from the governor's special session and convenes its own special session. In that scenario, it is my opinion that there is minimal risk that a court would invalidate the legislature's choice to convene in Juneau under its own, more broad, constitutional power to call itself into special session.

Note that the decision as to the location or where to convene the special session is for the bodies to decide, not just the presiding officers. A quorum is needed to convene the special session. Accordingly, there is some risk that if the legislature disregards the location designated in the governor's proclamation, and the legislature is not united in its response to the governor's proclamation, members may appear in multiple locations.<sup>18</sup> Given the difficulty in predicting how a court might rule on this issue, if the legislature wishes to meet in Juneau but does not exercise its own constitutional authority to call a special session, the option least likely to raise legal controversy is to convene in Wasilla and take a formal vote to move the special session or a vote to call itself into special session in Juneau. The decision as to where to convene this special session will ultimately require a balance of the litigation risks with the need to preserve the legislature's independence, and resources, in determining the location of its sessions.

If you have any additional questions, please advise.

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<sup>17</sup> If the legislature deems the location of the special session inadequate or too costly, or disputes the governor's power to compel attendance at a specific location other than the capital, the legislature also has the option to initiate litigation challenging the governor's authority to select the special session location.

<sup>18</sup> It is important to remember that the governor also has the power to convene the legislature under art. III, sec. 17, Constitution of the State of Alaska. If the legislature fails to meet in Wasilla, the governor may attempt to convene the legislature in Wasilla under this provision. Again, this would be an unprecedented maneuver, and it is unclear whether a court could uphold any such attempt. Note that while the legislature has the power to compel the attendance of its own members under art. II, sec. 12, the governor does not possess that same authority to compel individual members.