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The Honorable Mike Shower
Alaska State Senate
600 E. Railroad Ave. Ste. 1
Wasilla, AK 99654-8135

Dear Senator Shower,

You have asked whether binding caucuses, such as those used by the Alaska Legislature, violate Alaska's coercion and bribery statutes.¹ In short, we do not believe a binding caucus as contemplated in Alaska statute and case law will meet the elements necessary to show either coercion or bribery.

As a preliminary matter, legislators have a right to association that protects their ability to form caucuses and to enforce caucus rules. Alaska courts have held that the Alaska Constitution's protection of an individual's right to freedom of association also applies to political parties to "associate together to achieve their political goals."² Further, the notion of caucuses as part of the political process is embedded in the statutes related to legislative function. AS 24.60.037(c) specifically states that legislators may meet in a closed caucus to discuss "political strategy." Under this section "political strategy" includes "organization of the houses, assignment of committee membership, scheduling of bills, vehicles for adoptions, house-senate relations, other procedural matters, caucus operations, meetings between majority and minority caucus leaders, meetings between majority and minority caucus leaders of both houses, meetings with the governor, deliberations with regard to political strategy, and discussions of issues in the context of political strategy." These factors strongly suggest that binding caucuses are not only contemplated as part of the political process but generally protected under the Alaska's Constitution.

¹ AS 11.41.530 and 11.56.100 respectively.

² *State v. Alaska Democratic Party*, 426 P.3d 901, 906 (Alaska 2018).

With the above in mind, a binding caucus likely does not meet the elements of either the coercion or bribery statutes. Generally, a person commits the crime of coercion if they compel another to act, or refrain from acting, by instilling in the person who is *compelled* a fear that if the person's demand is not met the person may take or withhold action as a public servant or cause a public servant to take or withhold action."³ (Emphasis added). Given that a person must be "compelled" to act, or refrain from acting, we do not believe that a court would find that a legislator's voluntary decision to join a caucus and the caucus leader's decision to enforce the rules of that caucus is so compulsory that it would qualify as coercion.

Similarly, bribery requires that a person "confer a benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, action, decision, or exercise of official discretion."⁴ Note that, under the bribery statute, "benefit" does not include "concurrence in official action in the case of legitimate compromise between public servants."⁵ Given this exclusion it is also unlikely that a court would find that voluntary membership in a caucus organized around a set of rules established to achieve common political goals would rise to the level of bribery.

Generally, the internal organization and structure of the legislature is governed by the Alaska Constitution and the legislature itself.⁶ Historically, courts have been reluctant to get involved in the inner workings of the legislature, instead holding that enforcement of the legislative rules falls squarely within the purview of the legislature.⁷ Using the criminal code to regulate the inner workings of the legislature, as noted above, is not likely to be successful. Binding causes are political in nature and we believe the most direct avenue for change in this area is through the use of the political process.

³ AS 11.41.530(a)(4) and Black's Law Dictionary (11th ed. 2019) defining compel as "[t]o cause or bring about by force, threats, or overwhelming pressure".

⁴ AS 11.56.100.

⁵ AS 11.56.130(2).

⁶ See Alaska Const. art. II, § 12 (authorizing the houses of each legislature to adopt uniform rules of procedure).

⁷ *Aboud v. League of Women Voters of Alaska*, 743 P.2d 333, 338 (Alaska 1987) ("[I]t is the legislature's prerogative to make, interpret and enforce its own procedural rules."); *Malone v. Meekins*, 650 P.2d 351, 359 (Alaska 1982) (holding that a violation of the uniform rules "is solely the business of the legislature and does not give rise to a justiciable claim").

Please let us know if we can be of any further assistance.

Sincerely,

John Skidmore
Deputy Attorney General