

STATE OF ALASKA

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March 30, 2010

The Honorable Mark Neuman
House of Representatives
Co-Chair of Resources Committee
State Capitol, Room 432
Juneau, AK 99801-1182

The Honorable Craig Johnson:
House of Representatives
Co-Chair of Resources Committee
State Capitol, Room 126
Juneau, AK 99801-1182

Re: Committee Substitute for House Bill 295(CRA)

Dear Representative Neuman and Representative Johnson:

We have reviewed Legislative Counsel Don Bullock's March 22, 2010 memorandum to Representative Neuman regarding "Transfer of land to the University (HB 295; Work Order No. 26-GH2829)," and wish to provide a response for consideration by your committee. We also wish to provide for you the attached February 25, 2010 letter from the undersigned to Representatives Munoz and Herron.

HB 295 was drafted in response to the Alaska Supreme Court's holding in *SEACC v. State*, 202 P.3d 1162 (2009) that dedication of university land revenue to the university's endowment trust created an unconstitutional dedicated fund. The Court also found that it could not sever the land conveyance provisions of the statute from the dedication provisions because it was unclear whether the legislature would have intended for the university to receive the land if the proceeds from the land were not dedicated to the endowment trust, but were instead managed as university receipts, subject to appropriation each year by the legislature. The Court therefore found the land grant

legislation unconstitutional in its entirety. HB 295 was drafted to specifically address the Alaska Supreme Court's ruling in *SEACC v. State*.

Two of the three legal issues that Mr. Bullock identifies in his March 30, 2009 and March 22, 2010 memoranda already have been addressed. The first issue, dedication of revenue from the conveyed land to the university endowment trust, is addressed in section 9 (deleting the provision dedicating land revenue to the endowment trust) and section 10 (specifying that land revenue is to be managed as university receipts, subject to appropriation each year by the legislature) of HB 295. In his March 24, 2010 letter to you, the Associate General Counsel for the University of Alaska proposed a technical edit to section 13 of the bill that would address the concerns Mr. Bullock raises on page 1 of his March 22, 2010 memorandum regarding the dedication of at least 25 percent of the land revenue to the permanent fund. The University and Department of Law both agree that Article IX, section 15 of the Alaska Constitution (which sets forth the types and amount of state revenue that must be dedicated to the permanent fund) applies to land conveyed under this bill.

The third issue raised by Mr. Bullock addresses the statutory requirements applicable to administration and disposal of university land. On page 3 of his March 22, 2010 memorandum, Mr. Bullock expresses concerns that the statutory framework for administration of university land, and AS 14.40.366 in particular, may not "rise[] to the level of a law effecting the disposal of land under art. VII, sec. 2 [of the Alaska Constitution], in light of the discretion granted to the Board of Regents." This concern is reiterated on pages 11 and 12. Mr. Bullock raises these same issues in his March 30, 2009 memorandum, which is largely repeated in his March 22, 2010 memorandum. While the Alaska Constitution requires that university land be "administered and disposed of according to law," it does not prohibit the legislature from delegating specific administrative functions (including decisions regarding management and disposal of individual parcels) to the Board of Regents. The legislature has delegated similar discretion to the Department of Natural Resources in administering state public domain land. See *Kachemak Bay Watch v. Noah*, 935 P.2d 816, 825-26 (Alaska 1997) ("The legislature's assignment of a task to an agency, such as the identification of districts at issue here, invariably involves the exercise of agency discretion.")


Mr. Bullock also states, on pages 11-12 of his March 22, 2010 memorandum, and page 9 of his March 30, 2009 memorandum, that the Alaska Constitution requires that university land be managed consistent with the Alaska Land Act. We disagree. The legislature has specifically exempted university land from the Alaska Land Act and from the statutes that govern use and classification of state land surface. See *AS 38.04.005(f)*; *AS 38.05.030(f)*. The legislature's disparate treatment of university land, managed by the Board of Regents, and state public domain land, managed by the Department of Natural Resources, recognizes the different responsibilities and purposes of the land management

programs of each agency of the state. The legislature also has enacted statutes that provide land management authority to other state agencies that hold title to and manage state land outside the Alaska Land Act. For example, *see AS 19.05.040, AS 19.05.080-.120 (Department of Transportation) and AS 42.40.250(7)-(10), AS 42.40.285, AS 14.40.350-.465 (Alaska Railroad)*. The validity of these statutes has not been challenged.

Thank you for considering these issues.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

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