



March 30, 2011

Representative Craig Johnson
Alaska State Legislature
State Capitol, Room 216
Juneau, AK 99801-1182

Representative Bill Stoltze
Alaska State Legislature
State Capitol, Room 515
Juneau, AK 99801-1182

Re: Alaska House Bill 125 (“Alcoholic Beverage Control Board”)

Representatives Johnson and Stoltze:

In response to the introduction of Alaska House Bill 125, the Fraternal Order of Eagles (“F.O.E.” or “Eagles”) submits the following statement for the hearing record.

F.O.E. is an international non-profit organization uniting fraternally in the spirit of liberty, truth, justice, and equality, and to make human life more desirable by lessening its ills and promoting peace, prosperity, gladness and hope. The F.O.E. has approximately 850,000 members in the United States and Canada. With more than 1,400 local Aeries (private club locations) – as well as over 1,300 Women’s Auxiliaries – in the U.S. and Canada, the F.O.E. is opposed to any state Alcoholic Beverage Control Board’s attempts to use metal keys, magnetic card keys, or identification cards to gain unauthorized access to private club premises. To be clear, as discussed further *infra*, the ABC Board already has ample opportunity for such access either during all hours of operation as well as by establishing the requisite level of circumstances to satisfy the law in order to obtain a search warrant. No compelling governmental interest, nor public policy, is satisfied by expanding these already universally recognized means of access. Thus, the F.O.E. stands in support of the Saddler/Thompson amendment to H.B. 125.

As it has been relayed, the Alaska ABC Board’s November 2010 attempts to collect magnetic card keys and/or identification cards from private clubs represented an alarming overextension of peace officer powers granted in the ABC Board’s statute. Had private clubs complied with the ABC Board’s request, the ABC Board would ostensibly have the unfettered ability to enter and/or search a private club; without any suspicion, without any evidence, without any proof,

or without having to establish to the satisfaction of a court of law that probable cause exists (whereby obtaining a search warrant). The foregoing “authority” is contrary to the U.S. Constitution which grants United States citizens (along with their businesses) freedom from unlawful search and seizure. It should be noted that while the ABC Board’s position may be that the “request” was voluntary, businesses may have felt to do otherwise would have subjected them to other forms of increased scrutiny; thus, the use of the term “authority”.

The Fourth Amendment to the Constitution of the United States of America prohibits unreasonable searches and seizures by federal law enforcement agents. The Fourteenth Amendment to the Constitution of the United States of America imposes the Fourth Amendment upon the states and to law enforcement agents within the states.

More specifically, the Fourth Amendment protects personal privacy, and every citizen's right to be free from unreasonable government intrusion into their persons, homes, businesses, and property – whether through police stops of citizens on the street, arrests, or searches of homes and businesses.

Lawmakers and the courts have put in place legal safeguards to ensure that law enforcement officers interfere with individuals' Fourth Amendment rights only under limited circumstances, and through specific methods (informally identified above).

Any ability for the ABC Board to enter a premise when closed, without the permission of the proprietor, raises the issue of illegal or unreasonable searches and seizures.

Furthermore, invoking other elements of the U.S. Constitution, in the case of the F.O.E., its members have a reasonable expectation of privacy, without any type of warrant or probable cause finding, in their membership club premises. The F.O.E. club locations are much more than establishments serving alcohol. They are a place where F.O.E. business is transacted, rituals carried out, charitable fundraising conducted. Unauthorized ABC Board access could violate any desired privacy in such endeavors.

If passed, the Saddler/Johnson amendment will act as a safeguard to ensure that ABC Board investigators interfere with individuals' Constitutional rights only under legally recognized circumstances, and through specific methods.

The Alaska ABC Board was established as a regulatory and quasi-judicial agency for control of the manufacture, barter, possession, and sale of alcoholic beverages in the state. That same ABC Board grants private clubs, such as F.O.E. Aerie locations, “Club Licenses,” allowing private social, fraternal or patriotic organizations to sell alcoholic beverages to members for consumption on the licensed premises only. While F.O.E. Aeries are indeed permitted to sell alcohol for member consumption on premises, F.O.E. Aeries are not saloons – they function primarily as premises within which members are able to assemble and conduct Eagles business. If a private club is suspected of abusing or misusing a Club License, a search warrant should be obtained based on the evidence collected. Otherwise, the ABC Board should not presume that every purveyor of alcohol in the state of Alaska is part of a criminal conspiracy and should thus relinquish reasonable expectations of due process and privacy.

To be clear, the Eagles do not support the abuse or misuse of alcohol, nor do they seek to lessen the impact of effective law enforcement. The F.O.E. is simply committed to responsible alcohol beverage service at private Aeries, and to keeping communities safe, while defending the privacy and due process expectations of its membership.