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MEMORANDUM February 17, 2012

SUBJECT: Immunity for suicide prevention training (SB 137 amendment)
(Work Order No. 27-LS0994\M.1)

TO: Senator Bettye Davis
Chair of the Senate Health and Social Services Committee
Attn: Tom Obermeyer

FROM: Jean M. Mischel
Legislative Counsel

You have asked whether the amendment providing for limited immunity from suits resulting from the training or lack of training for suicide prevention awareness required by the above-referenced bill as suggested by the Anchorage School District is necessary. AS 09.50.250 and 09.50.253 already cover tort immunity for state employees, and AS 09.50.253(g)(2)(A)(ii) includes "a person appointed to a board or commission of state government." AS 09.65.070(d)(2) grants immunity to municipalities and their agents and employees for performing or failing to perform a ""discretionary function." The case law on what constitutes a "discretionary function" is extensive and complicated; I could not say with certainty that it would immunize a municipal school district and its employees in all cases.

The issue of whether school districts and their employees are immune from suit for an alleged violation of federal law as an "arm of the state" under the 11th amendment of the United States Constitution was decided against an Alaska municipal school district in *Holz v. Nenana City Public School District,* 347 P.3d 1176 (9th Circuit) (Alaska 2003). In that case, an applicant for a position with a city school district was allowed to sue the district and district officials for alleged violations of federal civil rights laws. In contrast, the United States District Court for the District of Alaska had previously decided in an unappealed decision that a regional educational attendance area in Alaska was an "arm of the state" for immunity purposes.

Although this amendment will not affect federal immunity, the more specific language proposed in amendment M.1 will provide additional state law protections from liability for damages that may be alleged to have been caused by a failure to provide the training required by the bill or the failure to prevent injury or death from a suicide. While the proof needed to find a causal connection is difficult, the amendment makes it clear that only intentional misconduct resulting in death, injury, or damage may be actionable.

JMM:ljw:plm
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Enclosure