# Attachment A

Opinion of the Alaska Attorney General, November 30, 1982

> such finding is arbitrary and without any reasonable basis in fact *(DeArmond v. Alaska State Development Corporation,* 376 P.2d 717, 1962).

The Alaska Supreme Court has yet to find a legislative determination of public purpose arbitrary and without any basis in fact. It has upheld the use of revenue bonds by a public corporation and general obligation bonds of a municipality for industrial development purposes *(DeArmond;* and *Wright v. City of Palmer,* 468 P.2d 326, 1970). It has upheld the use of revenue bonds by a public corporation to purchase home mortgages *(Walker v. Alaska State Mortgage Association,* 416 P.2d 245, 1966). It has upheld state grants to homeowners to pay off the mortgages of property lost in the 1964 earthquake *(Suber v. Alaska State Bond Committee,* 414 P.2d 546, 1966). In *Suber* the court said: "It is not essential that the entire community or any particular number of persons should benefit from remedial legislation in order that a public purpose be served. The purpose of the Program is no less public because its benefits may be limited by circumstances to a comparatively small part of the public." The court found no violation of this section by the Anchorage municipal telephone utility competing with private vendors of telephone equipment *(Comtec, Incorporated v. Municipality of Anchorage,* 710 P.2d 1004, 1985).

A complex issue related to the public purpose safeguard of this section of the constitution concerns the activities of incumbent elected public officials in their quest for reelection. A governor running for reelection, for example, is vulnerable to the allegation that official travel and public appearances are campaign-related and not *bona fide* public business. The courts in Alaska have not been confronted with such a suit, and court decisions elsewhere give little encouragement to those contemplating one.

**Section 7. Dedicated Funds**

> **The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.**

Convention delegates prohibited the dedication, or "earmarking," of funds for specific purposes so that the legislature would not tie its own hands in providing for the public needs of the day. The commentary on this section by the constitutional convention committee that drafted it included this observation:

> Even those persons or interests who seek the dedication of revenues for their own projects will admit that the earmarking of taxes or fees for other interests is a fiscal evil. But if allocation is permitted for one interest the denial of it to another is

> difficult, and the more special funds are set up the more difficult it becomes to deny other requests until the point is reached where neither the governor nor the legislature has any real control over the finances of the state.

The phrase "as provided in Section 15 of this article" in the second sentence was added by an amendment in 1976 to allow creation of the Alaska Permanent Fund (see Section 15). Two exceptions to the prohibition against earmarking were allowed by the convention delegates. One exception is a dedicated fund that was already in existence, such as the school fund of AS 43.50.140, which receives proceeds from the tobacco tax for use of school repair and construction. The other exception allows new earmarking when it is required by federal law to participate in a federal program. This is the case with the Fish and Game Fund of AS 16.05.100, to which sport hunting and fishing license fees are dedicated.

A statutory dedication of revenue may not seem too serious because future legislatures are not bound by it. But a statutory dedication is likely to be self-perpetuating. A governor's veto might block a future legislature's effort to repeal the dedication. The flow of money into and out of the fund may be "off-budget" and shielded from annual review by the finance committees. And the dedication fosters the development of a constituency that benefits from the dedication and resists changes to it.

How comprehensive did the convention delegates mean to be with this prohibition against dedicated funds when they adopted the phrase "proceeds of any state tax or license" in the first sentence? Did they mean all state revenue, or did they want to exclude from the prohibition against dedication those state revenues that are not derived from a tax or license? The question became important when Alaska began to receive substantial income from oil lease bonuses and royalties, which are not proceeds from a tax or license. An opinion of the attorney general of an early administration said that oil lease royalty income was outside the prohibition against earmarking in this section. A later opinion reversed this interpretation and held that the historical record of the convention made it clear that the delegates intended to bar the dedication of all state revenues, whether or not they derive strictly from a tax or license (1975 Opinion Attorney General No. 9, May 2). Consequently, a constitutional amendment was required to create the Alaska Permanent Fund.

The courts have not ruled on the matter, but it is generally understood that the authors of the constitution intended certain exceptions to the prohibition against dedicated revenues, such as pension contributions, proceeds from bond issues, revolving fund receipts and sinking fund receipts (1982 Informal Opinion Attorney General, November 30). Indeed, beyond these practical exceptions to the prohibition on the dedication of revenue, it must be noted that such dedications have a legitimate role in state financial management, despite the public policy problems that caused them to be prohibited in the Alaska Constitution. Dedication allows the benefits of a public program to be directly linked to those who pay for them. Revenues are dedicated in Alaska today in a manner that makes the practice constitutionally acceptable, namely that the pertinent statutes say that the legislature "may" appropriate the money for its designated purpose. It is understood that the legislature will do so, and

failure to do so will abrogate a political agreement. An example of this practice is the fisheries enhancement tax levied under AS 43.76.010. This is a tax on salmon fishermen intended to support salmon hatcheries. The tax receipts are deposited to the general fund, and "the legislature may make appropriations to the Department of Community and Economic Development for the purpose of providing financing to qualified [regional aquaculture] associations" (AS 43.76.025).

Enterprise funds are also examples of de facto dedication of revenues, such as the Marine Highway System Fund, which directs receipts from the sale of tickets on the ferry system to the support of that system. The constitutionality of this fund was challenged in court and upheld because the language of its authorizing statutes is permissive and does not restrict the authority of the legislature to appropriate money from the fund (although parts of the act creating this fund that restricted the authority of the executive branch to request appropriations from the fund were found to violate the prohibition of this section; see *Sonneman v. Hickel*, 836 P.2d 936, 1992).

**Section 8. State Debt**

> **No state debt shall be contracted unless authorized by law for capital improvements or unless authorized by law for housing loans for veterans, and ratified by a majority of the qualified voters of the State who vote on the question. The State may, as provided by law and without ratification, contract debt for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting natural disasters, or redeeming indebtedness outstanding at the time this constitution becomes effective.**

Limitations on the ability of states to incur debt are a common feature of fiscal articles of state constitutions. They are the consequence of well-publicized defaults by some of the older states on bonds issued for overly ambitious public works projects and of scandals arising from corrupt public construction and financing schemes. Some constitutional limitations restrict general debt to specific purposes (only road construction, for example); some limit the amount of debt that may be issued by establishing a ceiling on total allowable annual debt payments (usually expressed as maximum percentage of general fund revenue); some require a supermajority vote of the legislature to contract debt; and others require a referendum for the electorate to approve state indebtedness. The Territorial Organic Act of 1912 originally prohibited the territory of Alaska and its municipalities from acquiring any kind of debt without congressional approval, but this stricture was removed in 1935.

In 1982 a constitutional amendment was ratified that inserted "or unless authorized by law for housing loans for veterans." This allowed the state to incur tax-exempt general obligation debt for veterans' housing loans. The amendment was a response to a 1980 federal law that prevented states or public corporations such as the Alaska Housing Finance Corporation from selling housing bonds in the tax-exempt market, but allowed an exception for general obligation bonds for veterans' housing.