

ABOUT THE LOCAL BOUNDARY COMMISSION

CONSTITUTIONAL ORIGIN OF THE LOCAL BOUNDARY COMMISSION

The framers of Alaska's constitution subscribed to the principle that, "unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution."¹ The framers recognized that a "grave need" existed when it came to the establishment and alteration of municipal governments and provided for the creation of the Local Boundary Commission (LBC or commission) in Article 10, Section 12 of the constitution.²

The LBC is one of only five state boards or commissions established in the constitution (among a current total of approximately 120 active boards and commissions). The Alaska Supreme Court characterized the framers' purpose in creating the LBC as follows:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee:

. . . lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.³

DUTIES AND FUNCTIONS OF THE LBC

The LBC acts on proposals for seven different municipal boundary changes. The term "municipalities" includes both city governments and borough governments. These are:

- incorporation of municipalities;
- reclassification of city governments;
- annexation to municipalities;
- dissolution of municipalities;
- detachment from municipalities;
- merger of municipalities; and

¹ Victor Fischer, Alaska's Constitutional Convention, p. 124.

² Article 10, Section 12 states, "A local boundary commission or board shall be established by law in the executive branch of state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the Legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action."

³ *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962).

- consolidation of municipalities.

In addition to the above, the LBC has a continuing obligation under statutory law to:

- make studies of local government boundary problems;
- adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution; and
- make recommendations to the legislature concerning boundary changes under Article 10, Section 12 of Alaska's constitution.

The LBC is sometimes assigned duties by the legislature. Examples include the 2002 requirement to study the unorganized borough and determine which areas meet borough incorporation standards, and the 2003 directive to work with the Department of Education and Early Development regarding school district consolidation. These materials are available on the LBC website.

LBC DECISIONS MUST HAVE A REASONABLE BASIS AND MUST BE ARRIVED AT PROPERLY

LBC decisions regarding petitions that come before it must have a reasonable basis. That is, both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must have a rational foundation.⁴ The LBC must proceed within its jurisdiction, conduct a fair hearing, and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law or if its decision is not supported by evidence.

COMMUNICATIONS WITH THE LBC

LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds the right of everyone to due process and equal protection. Ensuring that communications with the LBC concerning municipal boundary proposals are conducted openly

⁴ See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if it has a reasonable basis; *Lake and Peninsula Borough v. Local Boundary Commission*, 885 P.2d 1059, 1062 (Alaska 1994); *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 97-8 (Alaska 1974). Where an agency action involves formulation of a fundamental policy the appropriate standard on review is whether the agency action has a reasonable basis; LBC exercises delegated legislative authority to reach basic policy decisions; acceptance of the incorporation petition should be affirmed if court perceives in the record a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence; *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982) (review of agency's exercise of its discretionary authority is made under the reasonable basis standard) cited in *Stosh's I/M v. Fairbanks North Star Borough*, 12 P.3d 1180, 1183 nn. 7 and 8 (Alaska 2000); see also *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 175-76 (Alaska 1986).

and publicly preserves those rights to due process and equal protection. To regulate communications, the LBC adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon the filing of a petition and remains in place through the last date available for the commission to reconsider a decision. If a decision of the LBC is appealed to the court, the limitation on *ex parte* contact is extended throughout the appeal in the event the court requires additional consideration by the LBC.

In that regard, all communications with the commission must be submitted through staff. The LBC staff may be contacted at the following address, telephone number, fax number, or email address.

Local Boundary Commission Staff
550 West Seventh Avenue, Suite 1640
Anchorage, Alaska 99501-3510
Telephone: (907) 269-4587 or 269-4559
Fax: (907) 269-4563
Email: LBC@alaska.gov

LBC MEMBERSHIP

The LBC is an independent commission. Members of the LBC are appointed by the governor for five-year overlapping terms.⁵ Notwithstanding their terms, the five members of the LBC serve at the pleasure of the governor.⁶ One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed from the state, at-large.

State law provides that members of the LBC must be appointed "on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership."⁷ LBC members receive no pay for their service on the commission. However, they are entitled to travel expenses reimbursement and per diem authorized for members of boards and commissions under AS 39.20.180. A biographical summary of the current members of the LBC can be found on the LBC website.

⁵ AS 44.33.810

⁶ AS 39.05.060(d)

⁷ AS 39.05.060(b)

STAFF TO THE LOCAL BOUNDARY COMMISSION

The framers provided for a local government agency in Article 10, Section 14 to advise and assist local governments.⁸ The constitutional duty to support local governments is entrusted to Alaska Department of Commerce, Community, and Economic Development (DCCED or department).⁹ Within DCCED, the Division of Community and Regional Affairs (DCRA) carries out the duty to advise and assist local governments, and provides staff to the commission pursuant to AS 44.33.810.

The department is required by AS 29.05.080 and 3 AAC 110.530 to investigate each boundary change proposal and to make recommendations regarding each to the commission. LBC decisions must have a reasonable basis (i.e., a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding). Accordingly, DCCED adopts the same standard for itself in developing recommendations regarding matters pending before the LBC. That is, DCCED's self-imposed standard requires its recommendations to the LBC to be based on a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding. DCCED takes the view that due process is best served by providing thorough, credible, and objective analysis of every municipal boundary proposal that comes before the LBC.

DCCED's commissioner, deputy commissioner, and the director of DCRA provide policy direction concerning recommendations to the LBC from staff. DCCED staff's recommendations to the LBC are not binding on the LBC. The LBC is an independent commission. While the commission is not obligated to follow DCCED recommendations, it has historically considered the department's analyses and recommendations to be critical components of the evidence in municipal boundary proceedings. The LBC considers the entire record when it renders a decision.

DCCED staff also provide technical assistance to municipalities, residents of areas subject to impacts from existing or potential petitions for creation or alteration of municipal governments, petitioners, respondents, agencies, and others. There are two full-time staff positions assigned to work on commission matters.

Types of assistance provided by DCCED staff include:

- conducting feasibility and policy analysis of proposals for incorporation or alteration of municipalities;

⁸ Article 10, Section 14 states, "An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law."

⁹ AS 44.33.020 provides that DCCED "shall (1) advise and assist local governments."

- responding to legislative and other governmental inquiries relating to issues on municipal government;
- conducting informational meetings;
- providing technical support during commission hearings and commission meetings;
- drafting decisional statements;
- implementing decisions of the commission;
- certifying actions;
- maintaining incorporation and boundary records for each of Alaska's municipal governments.
- drafting reports, correspondence, public notices, legislation, or regulations as requested by the commission;
- coordinating, scheduling, and overseeing public meetings and hearings for the commission;
- developing orientation materials and providing training for new commission members;
- maintaining and preserving commission records in accordance with the public records laws of the state;
- developing and updating forms and related materials for use in municipal incorporation or alteration; and
- if directed by the commission, acting as a petitioner on a matter that the commission believes will promote local government standards in the Alaska constitution, AS 29.04, AS 29.05, or AS 29.06.

PROCEDURES OF THE COMMISSION

Procedures for establishing and altering municipal boundaries and for reclassifying cities are designed to secure the reasonable, timely, and inexpensive determination of every proposal to come before the commission. The procedures are also intended to ensure that decisions of the commission are based on analysis of the facts and the applicable legal standards, with due consideration of the positions of interested parties. The procedures include extensive public notice and opportunity to comment, thorough study, public informational meetings, public hearings, a decisional meeting of the commission, and opportunity for reconsideration by the commission. Petition procedures are described in other documents on the LBC website.