

STATE OF ALASKA

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / BOX 2170 - JUNEAU

September 1, 1964

The Honorable Harold D. Strandberg
Chairman, House Finance Committee

The Honorable Howard Bradshaw
Chairman, Senate Finance Committee
Alaska State Legislature
Juneau, Alaska

Re: Constitutionality of Legislation
Providing Grants for Mortgage Adjustment
or Retirement

Gentlemen:

You have asked whether House Bills 1, 2, 3 and 4 of the Third Legislature, First Special Session, are in any way in conflict with the provisions of Sec. 6, Art. IX of the Constitution of the State of Alaska. The bills in question all relate to the establishment of a program to retire or adjust outstanding home mortgage obligations or other real property liens secured by one to four family dwellings which were destroyed or severely damaged in the earthquake of March 27, 1964, and subsequent seismic waves. These bills would implement Section 57 of the "1964 Amendments to the Alaska Omnibus Act" by using Federal grants and State matching money to relieve mortgagors whose homes were severely damaged or destroyed in the 1964 earthquake. Under the program, mortgagors would benefit from direct grants of Federal and State money on a fifty-fifty-matching basis. The bills provide that the state's share of the \$11,000,000 program would come from the sale of general obligation bonds, either to the Federal Government or to the public.

Sec. 6, Art. IX of the State Constitution provides as follows:

"No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose."

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Since these bills involve an appropriation of public money and the use of the public credit, the question is whether the appropriation of \$5,500,000 for mortgage relief is for a valid public purpose within the meaning of the Alaska State Constitution. The purpose for which the \$5,500,000 is to be used is to provide matching money on a fifty-fifty basis to relieve mortgagors whose homes have been severely damaged by the 1964 earthquake. The term "severely damaged" in these bills means that the physical damage to the dwelling securing the home mortgage obligation or other real property lien amounts to 60 per cent or more of the pre-earthquake value of the secured property.

Statistics compiled by the Alaska State Housing Authority indicate that at least 368 mortgaged homes were destroyed or 60 per cent damaged by the 1964 earthquake. Presumably at least 368 families are, therefore, within the scope of relief provided for by the bills in question. It should be noted that the Housing Authority figures are minimum figures because its surveys normally do not extend beyond city limits.

These mortgagors have lost their homes in what has been termed the greatest natural disaster to befall any state in the history of the United States.

For those whose homes were destroyed or 60 per cent damaged and who have substantial mortgage obligations, no other effective relief is available. The purpose of the proposed legislation is to afford financial relief for these mortgagors who otherwise will be without help. These mortgagors, in many cases, found themselves in the impossible situation of having a large mortgage obligation to pay and no home in which to live after March 27, 1964. This meant that they were obligated to make their mortgage payments until their entire mortgage obligation was paid because, in most cases, they would never be able to sell the home securing the obligation. The mortgagor could only borrow another \$20,000 or \$30,000 to repair his damaged home or to purchase a new home. If he followed this course, he would have a double burden to pay until the first mortgage was paid, which might be as long as 30 years in the case of some FHA loans. Most individuals in this position are well advised to file for bankruptcy rather than struggle under the double burden for 20 or 30 years.

The tragic impact of having a substantial number of families laboring under the double burden of two home mortgages

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extends beyond the personal financial hardships of the directly affected mortgagors. The impact of having over 360 families each attempting to pay two mortgages (one of which cannot be satisfied by a sale of the security) goes to the whole economy of the area affected by the earthquake and is a matter of genuine public concern. This is not a case of a few isolated families in one or two areas of the State. This is a case affecting literally hundreds of families in Valdez, Kodiak, Seward, Cordova and Anchorage--the major population area of the State. The number of people involved and the hopelessness of their financial situation compels the conclusion that the economy of the entire earthquake area of the State is adversely affected by the absence of an adequate program for mortgage relief.

The effect on the tax base of the State and the municipalities involved is obvious. The destruction of a substantial number of residential dwellings must depress the local tax base on all levels. If this \$11,000,000 program is implemented, the tax base will be substantially greater than it otherwise would be because a substantial number of families will be able to rebuild their homes that otherwise would not. This will restore the tax rolls and protect the tax structure of the local governments affected now and in the future.

The program, if implemented, would stimulate the economy of the earthquake devastated areas such as Valdez because it would promote home rebuilding on a scale that would be inconceivable in the absence of an adequate program for mortgage relief as broad in scope as that contemplated by the legislation in question.

Further, the type of mortgage relief envisioned by the proposed legislation will forestall delinquencies and defaults in payments to lending institutions. A great deal of the home mortgage capital necessary to the development of the domestic economy must necessarily come from lending institutions outside of Alaska. It is imperative that we retain their confidence in the ability of Alaskans to live up to their financial commitments. This is to insure that such institutions will be willing to continue investing in home mortgages in this state. This interest on their part is a relatively recent development and must be maintained.

Since the economic structure of any urban area depends to a great extent on the financial solidarity of its home owners, a program of relief of this nature is vitally important to the

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whole community. If a substantial portion of the community is relieved from a disaster-incurred financial burden of unbearable proportions, then the community as a whole is substantially benefited and the program for relief assumes an evident public purpose. This assumption is based on the axiom that what benefits and protects the economic structure of the community benefits the entire community.

In our opinion, in view of the background of the calamitous earthquake of 1964, the money appropriated by the program that would be established by the passage of House Bills 1, 2, 3 and 4 would be appropriated for a legitimate public purpose within the meaning of the Alaska Constitution and the cases that explain the meaning of public purpose.

The scope of public purpose, as it relates to direct financial relief to private individuals who have suffered adversity as a result of calamitous events, whether of a natural or non-natural origin, has expanded to permit states to provide needed relief to private individuals.

It has been well established, since the case of Home Bldg. & Loan Association v. Blaisdell, 290 U.S. 398 (1934), that when a public disaster strikes, the state, in addition to its ordinary powers, may exercise certain extraordinary reserve powers. These powers, called the police powers, relate to the public health, safety, morals, and since the 1930's, to the general welfare of the people of a state. The enactment of legislation under the police power has expanded the concept of public purpose in an emergency situation in order to permit the states to realistically cope with problems which have been created by the emergency. Public funds may be utilized by states to accomplish necessary programs of emergency relief and such purposes are, in reality, for the time during which the emergency exists, public purpose.

The Supreme Court of the United States, in the Blaisdell case, supra, upheld a Minnesota law granting private individuals temporary relief from mortgage obligations which they could not meet because of the disaster of the economic depression in 1929. The Court held that the police power of the state necessarily expanded in times of great calamity caused by fire, flood, earthquake, or economic depression to permit relief of individuals injured by the disaster. The Court noted that the interests of private individuals could be protected when the interests of the state are thereby protected. The Court said, at page 442:

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"It is manifest from this review of our decisions that there has been a growing appreciation of public need and of the necessity of finding ground for a rational compromise between individual rights and public welfare. The settlement and consequent contraction of the public domain, the pressure of a constantly increasing density of population, the interrelation of the activities of our people and the complexity of our economic interests, have inevitably led to an increased use of the organization of society in order to protect the very bases of individual opportunity. Where in earlier days, it was thought that only the concerns of individuals or of classes were involved, and that those of the state were touched only remotely, it has later been found that the fundamental interests of the state were directly affected; and that the question is no longer merely that of one party to a contract against another, but of the use of reasonable means to safeguard the economic structure upon which the good of all depends."
 (Emphasis added)

Similarly, in Opinion to the Governor, 63 A.2d 724 (R.I. 1949), the Supreme Court of Rhode Island recognized that the police power of the state may be utilized to meet emergency situations, and that the scope of public purpose expands in order to permit the state to meet an existing emergency. The Supreme Court of Rhode Island therefore found a public purpose in the state using public funds to engage in the housing business to relieve an emergency caused by an acute housing shortage. The Court stated:

". . .the police power may be exercised by the state in case of an emergency which the legislature has found to exist as a matter of fact, and which it has declared is causing widespread distress to a large portion of the population with resulting danger to the health, safety or morals of the public generally. Provided that the legislation which authorizes the state or its local subdivisions to engage in a business activity

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is temporary and reasonably related to and limited by the duration of the existing and declared emergency, it is our judgment that the constitutional inhibitions against the legislature applying public funds for a private purpose . . . are not violated, as in such an emergency the action of the state is directed at the accomplishment of what in reality for the time being is a public purpose."

Direct grants to private individuals of public funds to provide relief from the widespread calamity of unemployment have to be upheld in several jurisdictions as being for public purposes. See, for example, Muskegon Heights v. Donigelis, 253 Mich. 260, 235 N.W. 83 (1931); San Francisco v. Collins, 216 Cal. 187, 13 P.2d 912 (1932).

The validity of grants or loans of aid to farmers who have suffered from the effects of natural disasters such as prolonged draughts and extreme temperatures have been upheld as a legitimate public purpose in the face of attacks on their constitutionality. Cobb v. Parnell, 183 Ark. 429, 36 S.W.2d 388 (1931); State ex rel Barnett National Bank v. Thursby, 150 So. 252 (Fla. 1933); State ex rel Simpson v. Meeker, 182 Ind. 240, 105 N.E. 906 (1914); Bally v. Van Dyke, 66 Utah 184, 240 Pac. 454 (1925); Cryderman v. Wienrich, 54 Mont. 391, 170 Pac. 942 (1918).

State statutes providing for grants of state money to private persons in the amount of the full value of their cattle, which were destroyed to prevent the spread of disease, have been upheld as achieving a public purpose. In these instances, the states were under no obligation to compensate the owners for the destroyed cattle. Nevertheless, a public purpose was found since the compensation would encourage owners to have their cattle inspected. Patrick v. Riley, 287 Pac. 455 (Calif. 1930); Kilpatrick v. Compensation Claim Board, 259 S.W. 164 (Tex. Civ. App. 1924).

The Wisconsin Supreme Court held that the expenditure of funds by the City of New Richmond to provide its citizens relief from the effects of a cyclone which had devastated the city constituted use of the funds for public purposes. State ex rel New Richmond v. Davidson, 90 N.W. 1067 (Wis. 1902).

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A case involving the use of state funds to relieve private individuals from the adverse effects of a calamity that is closely analagous to the instant case is San Diego County v. Hammond, 59 P.2d 478 (Calif. 1936). In California certain public improvement projects were financed by bonds which were issued by improvement districts. The principal and interest on the bonds were to be repaid by assessments on property owners which were in addition to the usual property taxes. During the depression many of the property owners were unable to pay both the assessments and property taxes and were faced with foreclosure. In order to protect property owners from loss of their property through foreclosure, the California Legislature enacted a law authorizing counties to purchase the bonds and cancel them. The end result of the law was to permit lands within the improvement district to escape the assessment. The Legislature made a finding that if the property within the improvement district was foreclosed upon or sold to the state, the districts would lose a substantial amount of tax income since the property would be removed from the tax rolls. The Court held that the Legislature's effort to prevent the removal of lands from the tax rolls and to restore the land to the tax rolls was a public purpose. The fact that private property owners and private bond holders would benefit from the purchase and cancellation of the bonds did not render the program unconstitutional. The Court said, at page 489:

"The mere fact that bondholders and property owners benefit from the scheme does not . . . render the appropriation invalid."

The similarity between the Hammond case and the situation confronting the Legislature are striking. The Court, in Hammond, found a public purpose in utilizing public funds to protect the tax base of the county. One of the purposes of the mortgage relief program stated in Sec. 2(6) of House Bill 1 is to protect the tax base of the State and municipalities. Here, as in Hammond, the bill provides relief to property owners in order to permit them to avoid the hardship of foreclosure upon their property.

Even in the absence of a calamity, many states have upheld the use of public funds for the purpose of loaning money to private persons so that they might purchase land or build homes. In Frazier v. Green, 44 N.E. 395, 176 N.W. 11 (1920), affirmed 253 U.S. 233, 64 L.ed. 878 (1920), an act of the North Dakota Legislature permitted the loaning of \$10,000,000 upon

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farms and real estate within the state for the purpose of providing homes for residents of the state was upheld as achieving a public purpose. See also State v. Clausen, 110 Wash. 525, 188 Pac. 538 (1920); Wheelon v. South Dakota Land Settlement Board, 43 S.D. 551, 181 N.W. 359 (1921).

In considering whether or not a particular legislative program will achieve a public purpose, it must be borne in mind that the whole concept of public purpose has broadened substantially over the course of the last three decades. In Faulconer v. City of Danville, 313 Ky. 468, 232 S.W.2d 80 (1950), for example, the Court said at page 82:

"The legislative determination of what is a public purpose will not be interfered with by courts unless the judicial mind conceives it to be without reasonable relation to the public interest or welfare and to be within the scope of legitimate government. The concensus of modern legislature and judicial thinking is to broaden the scope of activities which may be classed as involving a public purpose. . . ." (Emphasis added)

The principle of law pronounced in Faulconer has been re-emphasized time and time again by other state courts. Doran v. Philadelphia Housing Authority, 331 Pa. 209, 200 Atl. 834 (1938); Roan v. Connecticut Industrial Building Commission, 189 A.2d 399 (Conn. 1963).

The Supreme Court of Alaska has not yet had occasion to rule upon the narrow question of whether disaster related legislation will achieve a public purpose thereby permitting the utilization of State funds for its purposes. However, the Supreme Court of Alaska has adopted the broad view of public purpose, consistent with the trend of judicial thinking throughout the United States which is to expand the scope of public purpose. In DeArmond v. Alaska State Development Corporation, 376 P.2d 717 (Alaska 1962), the Supreme Court of Alaska upheld as achieving a public purpose an act which authorized the corporation to make loans to private persons to develop industrial and commercial ventures. It should be emphasized that although the direct benefit of the development program is derived by private persons, there are substantial and incidental benefits to the public through the creation of jobs, the broadening of the tax base and

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developing the economy of the State. Similarly, the proposed mortgage adjustment program, though directly benefiting individuals, will likewise provide a substantial benefit to the public since it will protect the tax base of the State and its political subdivisions, a public purpose, the validity of which has already been established in the Hammond case, supra. Furthermore, the program will permit the State to retain its financial integrity within the banking and financial centers of the United States. This is absolutely essential to assure that the State will have a continuing source of development capital necessary to the State's growth and development. The mortgage relief provided by the proposed legislation will permit persons who would otherwise be unable to rebuild or repair their homes to start anew without the burden of a substantial home mortgage. Establishment of a program which will provide substantial benefits to the State is clear evidence of the proposed legislation's public purpose. Furthermore, acts of the Legislature declaring that the purposes to be achieved by legislation are public purposes are protected by a strong presumption as to their constitutional validity. Courts will not overturn the Legislature's finding of a public purpose unless it is without any reasonable basis. In speaking of the scope of public purpose in Alaska, our Supreme Court has said, at page 721:

"At the outset, we observe that the phrase 'public purpose' represents a concept which is not capable of precise definition. We believe that it would be a disservice to future generations for this court to attempt to define it. It is a concept which will change as changing conditions create changing public needs

"In determining the question presented this court adopts for its guidance the general rule, supported by the great weight of authority, that where the legislature has found that a public purpose will be served by the expenditure or transfer of public funds or the use of public credit, this court will not set aside the findings of the legislature unless it clearly appears that such finding is arbitrary and without any reasonable basis in fact." (Emphasis added)

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In summary, it is well established that the concept of public purpose expands in order to permit the State to cope with calamitous events of both natural and non-natural origin. The State may therefore use its police power to enact legislation authorizing the use of public funds to provide direct relief to private persons. In our opinion, the proposed mortgage assistance program is constitutionally permissible as a public purpose since, in aiding private persons, the program will protect vital public interests of the State of Alaska.

We, therefore, are of the opinion that House Bills 1, 2, 3 and 4 will achieve legitimate public purposes within the meaning of Article IX, Section 6, Constitution of the State of Alaska.

Yours very truly,


WARREN C. COLVER
ATTORNEY GENERAL

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