

**ALASKA STATE LEGISLATURE  
HOUSE SPECIAL COMMITTEE ON TRIBAL AFFAIRS**

February 27, 2020

8:04 a.m.

**MEMBERS PRESENT**

Representative Tiffany Zulkosky, Chair  
Representative John Lincoln  
Representative Dan Ortiz  
Representative Dave Talerico  
Representative Sarah Vance

**MEMBERS ABSENT**

Representative Bryce Edgmon, Vice Chair  
Representative Chuck Kopp

**COMMITTEE CALENDAR**

PRESENTATION: EQUITY IN RURAL ALASKA

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

HOWARD TRICKEY, Attorney  
Holland & Knight  
Anchorage, Alaska

**POSITION STATEMENT:** Provided information and answered questions during a presentation on Equity in Rural Alaska.

BARBARA BLAKE, Director  
Alaska Native Policy Center  
First Alaskans Institute  
Juneau, Alaska

**POSITION STATEMENT:** Provided information and answered questions during a presentation on Equity in Rural Alaska.

**ACTION NARRATIVE**

[8:04:20 AM](#)

**CHAIR TIFFANY ZULKOSKY** called the House Special Committee on Tribal Affairs meeting to order at 8:04 a.m. Representatives

Vance, Lincoln, Ortiz, Talerico, and Zulkosky were present at the call to order.

**PRESENTATION: EQUITY IN RURAL ALASKA**

[8:04:56 AM](#)

CHAIR ZULKOSKY announced that the only order of business would be a presentation on Equity in Rural Alaska.

[8:05:34 AM](#)

HOWARD TRICKEY, Attorney, Holland & Knight, relayed that he has done a lot of work in the education field during his over 40 years practicing law in Alaska. He said he successfully argued the Kasayulie v. State case, which was filed May 1998, and he described to the committee the historic funding issues related to urban/rural school construction. Mr. Trickey said he would provide committee members the history and context of the case: why it was brought, what the court ruled in the case, how the state responded to the court's ruling, and what the current state of compliance with the Kasayulie settlement is today.

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MR. TRICKEY listed the plaintiffs in the case: Willie & Sophie Kasayulie; Paul & Maryann Mike; Arthur & Ruth Heckman; the Bering Strait School District; the Iditarod Area School District; the Kashanamiut School District; the Lower Kuskokwim School District; the Lower Yukon School District; the Yupiit School District; and Citizens for the Educational Advancement of Alaska's Children (CEAAC). Mr. Trickey noted the plaintiffs were listed up front to show how much support there was for the case. He also noted that the breadth and depth of support was in response to the deplorable condition of schools prior to the case. In general, schools were found in a deteriorated state, with present physical and other dangers, having suffered structural deficiencies, and frequently in non-compliance with various electrical codes, fire codes, health and safety codes, or environmental guidelines, he stated.

MR. TRICKEY informed the committee that several professionals who had been prepared to testify indicated that if the state had enforced building codes uniformly around the state, many of the schools would have been closed and deemed unsafe and unfit to conduct school and learning activities, depriving students of meaningful learning opportunities. Many schools were also found

to be overcrowded, he continued, some in excess of 180 or 200 percent capacity, and consequently lacking adequate instructional space to meet curriculum and accreditation guidelines.

[8:10:35 AM](#)

MR. TRICKEY spoke about what the state had been doing in 1998 to fund schools. There was a dual funding system, he explained: one system was automatically funded through a reimbursement program, and the other system was funded through a Community Initiatives Program (CIP) grant. The former received constant funding by the Alaska State Legislature while the latter, which supported Regional Educational Attendance Area (REAA) school districts, received none. In 1990 the state adopted a new law, he related, to prioritize construction and maintenance needs in schools throughout the state. Prior to 1990, he added, schools had been funded based "pretty much solely" on political power and political whim. When it was realized that this way of funding was neither equitable nor meeting the construction needs, the new law ensured that capital projects were funded on a basis of need rather than on a political basis. The new legislation, he continued, required the Department of Education & Early Development (DEED) to review and evaluate, and recommend, projects for approval. The projects would also be granted based on priority.

MR. TRICKEY said that even though the new system was adopted, and the debt reimbursement program continued, the legislature failed for at least six fiscal years to fund the CIP program at all. The money from the debt reimbursement program goes to districts which have bonding capacity and taxing authority, he explained, but the REAA school districts do not have taxing authority, and Article 10 Section 2 of the U.S. Constitution may prohibit the legislature from granting taxing authority to REAA schools.

[8:14:50 AM](#)

MR. TRICKEY offered a scenario in fiscal year 1995 (FY 95), between the 1990 legislation and the time it was decided the dual system of funding was unconstitutional in 1999. Most of the major maintenance projects on the priority list were to take place at REAA schools. The aggregate amount for these projects was \$103 million. Of the \$103 million, the state funded zero, Mr. Trickey imparted. In FY 95, the state paid almost \$94 million in debt reimbursement for school construction and major

maintenance, which was 100 percent of the debt reimbursement entitlement for city and borough school districts in FY 95. This continued to be the pattern for FY 96, FY 97, FY 98, and what was proposed for FY 99 until the state decided the dual system of funding was unconstitutional.

[8:19:31 AM](#)

REPRESENTATIVE VANCE asked Mr. Trickey to explain the difference between *Kasayulie v. State* and *Molly Hootch* [Hymes] case [a 1972 lawsuit in which Hymes, plaintiff, sued Alaska for not providing high schools in Alaska Native villages].

[8:20:07 AM](#)

MR. TRICKEY replied that the *Molly Hootch* case dealt with the issue of whether or not the state by general law shall establish and maintain a system of public schools "open to all children of the state." In the *Molly Hootch* case, the plaintiffs argued that the state was not meeting its constitutional obligations because the state didn't provide any schools in many rural parts of the state. When the case went to the Alaska Supreme Court, the Bureau of Indian Affairs (BIA), within the U.S. Department of the Interior (DoI), still operated some schools which were transitioning to state-operated systems, but many communities had no secondary education school option available for Native Alaskan children, so those children were either sent to regional boarding schools or to the Lower 48 to attend school in a BIA facility. Mr. Trickey stated that the *Molly Hootch* case dealt with whether the state had an obligation to provide schools in rural communities.

MR. TRICKEY related that the *Molly Hootch* case was resolved by an admittance of denial of equal protection. The state resolved and settled that case and embarked upon a great program of building a public school system in rural Alaska and started building and constructing schools. That was 1976, he pointed out. He then asked the committee to fast forward to 1998. *Kasayulie vs. State* had to do with the state's continuing obligation to adequately fund schools so schools may be built and maintained to standards that allowed for access to an educational program.

MR. TRICKEY said the court ruling in *Kasayulie vs. State* was made by summary judgement, a technical point that is valid because summary judgements are made in cases where there are no disputed errors of fact or need for trial. The key ruling in

the case under the education clause by Judge Reese, Mr. Trickey continued, was to place an affirmative duty on the state to provide public education, of which facility funding is an integral part.

[8:24:14 AM](#)

MR. TRICKEY imparted that along with the duty to provide educational facilities came the duty to fund said facilities, and all schools must have equal access to funds. The court acknowledged, according to Mr. Trickey, the CIP grant program's never being funded and, as a result, rural schools not being funded, that the bond reimbursement program was available only for boroughs and municipalities, and that REAAs had no access to those funds. Failing to provide funds violated the education clause of the Alaska constitution, he related. The court also made rulings as to the equal protection clause of the state constitution, he said, recognizing in its analysis that education is a fundamental right and that the state could not justify the funding inequality between urban and rural districts based on the dual system of funding.

MR. TRICKEY said the state had argued that the district needed to form boroughs and that that had been its rationale/"incentive" for withholding funding. The state had also argued that it could not be responsible for fixing all problems at the same time, and that rural school districts would have to wait their turn. The problem, Mr. Trickey pointed out, was that rural schools' turn never came. After the rulings in favor of rural schools in 1999, the state for a couple of years did increase funding to rural schools. As a result, the state went back to court and asked the court to determine that it was in compliance with its constitutional obligation, because in 2000 and 2001 appropriations for rural schools were increased. In doing so, however, the law had not been changed. The state felt that it was doing enough, and the court rejected the argument, saying that the fact that the state had not addressed the problems with the flawed dual funding system were severe in that they were racially discriminatory in the least.

[8:28:26 AM](#)

MR. TRICKEY related that the court said in 2001 that the education, health and safety of Alaska's youth, the dignity of fellow citizens, and the respect for public officials had suffered, further aggravating the racial divisions within the state. The court said that the legislature needed to respond by

taking real action that provided access to funding for rural schools. This was March of 2001, Mr. Trickey told the committee. Over the nine years until 2010, the legislature sporadically funded schools but there was no change in the law, which was still subject to political whim, although the court's decision did put some pressure on the legislature to increase the amount of funding. Eventually what occurred, Mr. Trickey continued, is that *Kasayulie v. State* was resolved as a result of efforts in the legislature to come up with a remedial scheme for providing substantial access to funding for REAA school districts for major maintenance and construction. The mechanism for doing so was Senate Bill 237 [passed during the Twenty-Sixth Alaska State Legislature], which provided the formula for determining, on an annual basis, the amount of funding that would be available each year. The statutory formula and the creation of the REAA construction and major maintenance fund was the basis for what become known as "the *Kasayulie* settlement."

[8:31:46 AM](#)

MR. TRICKEY addressed where *Kasayulie v. State* left folks in 2020 and what Governor Mike Dunleavy's veto and former Governor Bill Walker's reduction of REAA construction funds had wrought. Mr. Trickey put forth that the state was "perilously close" to violating the constitutional obligations that were established in the *Kasayulie* case. It might look like urban schools and rural schools were being treated equally when they were being equally harmed by 50 percent reduction of debt reimbursement and REAA construction funds, respectively.

MR. TRICKEY said that as a result of Governor Dunleavy's vetoes, which took place in the first session of the Thirtieth Alaska State Legislature and have not been overridden, the situation is being revisited. Governor Dunleavy had been written a letter outlining concerns about the state's pattern of funding/ignoring rural school construction needs and had [at the time of this meeting] not responded.

[8:35:18 AM](#)

The committee took a brief at-ease at 8:35 a.m.

[8:35:43 AM](#)

REPRESENTATIVE ORTIZ asked whether Mr. Trickey had mentioned rural districts' incentives or directives for REAA districts to

form boroughs as part of the solution to getting adequate funding for school construction purposes.

[8:36:25 AM](#)

MR. TRICKEY answered that in the Kasayulie case there were three legal claims: the violation of the education clause, violation of Title VI, and equal protection. Regarding the last claim, equal protection, after it had been determined that education was a fundamental right, the state had to offer a compelling reason why it had two systems of funding schools. To justify its compelling reason for doing so, the state argued that the system was designed so that rural areas could form boroughs, that over time these areas would realize they needed to form boroughs and generate revenue through taxes.

REPRESENTATIVE ORTIZ asked for confirmation that the court had rejected the state's argument.

MR. TRICKEY confirmed that is correct.

[8:38:36 AM](#)

CHAIR ZULKOSKY confirmed that the letter sent to Governor Dunleavy was included in the documents Mr. Trickey provided.

[8:40:40 AM](#)

BARBARA BLAKE, Director, Alaska Native Policy Center, First Alaskans Institute, related that Native Alaskans' forced removal shifted the trajectory to an extent that is not reflected today. The inequity is so built into the system that folks often do not realize it is happening until after the fact, she related.

[8:44:53 AM](#)

MS. BLAKE pointed out by way of example the robust natures of Native people and of pioneers, who came to a land where they had to learn how to survive very quickly. Native Alaskans did what the pioneers did for 10,000 years before the latter came, but that is a subject that is rarely taught, much less celebrated, in schools. Ms. Blake related that she was asked to give four lectures as a guest lecturer for a Walt Disney Company cruise, one of which was to be on glaciers; the rest were at Ms. Blake's discretion. She sent in her presentations to the cruise's director, who said another lecture should be about the gold rush in Skagway. Ms. Blake said that she was happy to oblige but

would give her presentation on the gold rush from a Native perspective. She said the director backpedaled, telling her she was allowed to speak on any topic of her choosing. She did speak on the gold rush in the end, she related, but gave a coinciding historical account.

[8:47:18 AM](#)

MS. BLAKE related that there were multiple stories that could be told, and that it was important to be able to reflect multiple perspectives. She told the committee that she moved back to Alaska from Washington, D.C., bringing her young son. Ms. Blake said they traveled to Fairbanks where she started a teaching position. She described being shocked that the kindergarten had neither representation of the Native Athabascan people who resided in Fairbanks nor any Alaska Native culture represented in her son's school. In Juneau, Alaska, however, she expressed her happiness at finding artwork that reflected Northwest Coast culture, Inupiat culture, Athabascan culture, and a portrait of Elizabeth Peratrovich. Signs welcoming students were also written in Tlingit in addition to English, she stated.

[8:49:55 AM](#)

MS. BLAKE questioned which cultures children today learn in schools, and she made a point of noting her son's confidence boost upon seeing himself reflected upon the walls of his own school. She lamented the lack of reflection of Native cultures in most of Alaska when compared with Hawaii, where visitors seem almost automatically immersed. Visitors to Alaska think about the gold rush and "a land untouched," she stated. Ms. Blake referenced the 2020 film Call of the Wild, which she said, sadly, is an example of the erasure of Alaska Native people.

[8:52:00 AM](#)

MS. BLAKE told the committee that schools in rural communities that fall under 25 students will have to close. Another problem is overcapacity, she pointed out, as is the case with some schools in Anchorage. She suggested that kids from crowded urban schools be transferred to rural schools. If serious consideration must be put into whether one's child would be safe in a rural community, said Ms. Blake, the vast inequity built into the public safety system should become readily apparent. Every legislator is elected to think and act and provide votes based on the entirety of Alaska, but this is often not the case

thanks to an implicit bias or inability to see that certain votes actually do communities a disservice.

8:54:16 AM

MS. BLAKE stated that rural communities' lack of a Division of Motor Vehicles is harmful, because people cannot get a REAL ID, which [as an alternate to a passport] is required in order to fly. She questioned how people would travel, especially without the Alaska Marine Highway System ferries. She recommended folks look at the State of Alaska Seal, which contains no representation of Alaska Native people. She related anecdotally how even changing the state dog to the Alaska Malamute from the Siberian Husky had been a challenge because of the latter's role in the pioneer history, whereas the former represented history's long view.

8:58:02 AM

MS. BLAKE related anecdotally that systems which were supposed to be equitable were not so, as members in her immediate family were effectively prevented from participating in those systems, and chances to participate were given instead to others from 300 miles away. Such systems are in place in the public safety, and water and wastewater sectors, to name two, despite an excess of funding so great U.S. Senator Lisa Murkowski was hired to try to figure out how to spend it all and fast, Ms. Blake related. The percentage of the money that went to communities without water and wastewater, despite the fact that one in four homes in rural communities were without running water, was 20 percent, she said. The rest went to communities which already had water and wastewater systems in place. The system was meant to provide equality throughout the system, but it didn't make sense, as Ms. Blake pointed out, that over \$50 million from the fund went to communities which already had water systems.

MS. BLAKE told the committee that beginning in Nome, Alaska, in June, First Alaskans Institute would be embarking on a series of week-long truth, racial healing, and transformation tribunals throughout the state over the next two years. The purpose of the tribunals is that the stories of inequity that have been buried and causing trauma will come to the surface where healing can take place. In order to reconcile, one must start from a good place, Ms. Blake pointed out. The transformation component will deal with the policy shifts that need to take place and have needed to for quite some time, she added.

[9:05:06 AM](#)

MS. BLAKE mentioned that there is also a dialogue series on racial equity at First Alaskans Institute. She brought to the committee's attention the book In the Courts of the Conqueror by Native attorney Walter R. Echo-Hawk, in which it is described that Native people can be seen as the canary in the mine shaft, and how if a culture can exist for 10,000-plus years, or 450 generations, living in one place, it is at the very least deserving of some recognition, respect, and appreciation. Not a lot of other cultures can say that, she added.

[9:07:20 AM](#)

CHAIR ZULKOSKY asked Ms. Blake to expand on her comment about how policymakers ought to reflect not one perspective but multiple perspectives, especially with regard to the way in which implicit bias can impact one's ability to see multiple perspectives and become unintentionally ingrained in the decision making process.

[9:08:11 AM](#)

MS. BLAKE replied that she had been told she was the one Native person in a representative's district; she knew this was not the case. The representative did not have an implicit understanding that Native people were spread throughout. If it were the belief that there were no Native people in that district, decisions were not being made that would benefit the well-being of the ones whose ancestors had been there since time immemorial, she added.

[9:10:22 AM](#)

CHAIR ZULKOSKY asked Ms. Blake why it may be problematic for the state to discuss equity and inequity in lawsuits.

[9:10:45 AM](#)

MR. TRICKEY answered that one of the things learned from the Kasayulie case was that the perpetuation of the conflict diminished the perception of the political leadership of the state and contributed to some of the racial antagonism. Litigation polarizes, Mr. Trickey continued, and does make it difficult for people to work together.

[9:12:26 AM](#)

MS. BLAKE answered that any time equity or inequity is addressed, one group is being favored over another, and perhaps saying that the value of one's education or rights are greater if a student lives in urban versus rural Alaska. The issues could use more finesse, she added.

[9:13:47 AM](#)

REPRESENTATIVE VANCE said that she appreciated the presentation of information via storytelling format as opposed to facts and figures because it was more personal and showed the decisions were affecting people. She also said in her district she has about 4 percent Alaska Native, and that her constituents have had to fight, because of the inequity, for their subsistence rights in the Cook Inlet after having fished there for generations. She also mentioned the Russian community in her district and their own struggle for school funding, in which they feel discriminated against. She explained that addressing issues of equity and inequity initially tells us that the way we do things is wrong, and no one likes to be told they're wrong.

REPRESENTATIVE VANCE illustrated, by way of analogy, the way it is beneficial to stand quite literally in another person's - in this case a village inhabitant's - place to be able to see what that person sees. She acknowledged the challenging and difficult questions, and asked for patience for those trying to understand. Representative Vance related a story about her father, who had been gone for months at a time working for Native corporations, and who told her that the work he was doing provided for the needs of generations of Alaska Natives. Representative Vance said she hoped [the state and Alaska Natives] could walk together to heal.

[9:21:16 AM](#)

REPRESENTATIVE ZULKOSKY said that many of the conversations have been theoretical, and she would be interested in pivoting back to the firm policy positions as they relate to equity. She asked Mr. Trickey to speak to what may happen if the vetoed REAA construction dollars from last year are not restored.

[9:22:10 AM](#)

MR. TRICKEY stated that in his opinion the failure to fund the REAAs at an adequate level was leading toward future litigation. He reiterated that it only appeared on a superficial level that

the rural and urban schools were being treated the same way as urban schools that had the bonding capacity and taxing authority to proceed with construction programs and meet the needs of school facilities. He added that the vetoes in effect would not only reduce funding but stop sustainable funding for rural school new construction and major maintenance as well as put the state in violation of its constitutional obligations again.

[9:24:29 AM](#)

REPRESENTATIVE VANCE said that she had also recognized inequality in grant distribution, and she asked what could be done to ensure the grants were being equally distributed.

[9:26:02 AM](#)

MR. TRICKEY answered that it was a grant-by-grant basis and had to do with numbers of students and daily membership, and there were several other factors having to do with supplemental funding provided.

[9:27:14 AM](#)

REPRESENTATIVE VANCE said she had assumed grant recipients were based upon need, but learned funds were granted based on who had the best idea. She said it wasn't the best measure of the best use of the money because often schools with the best idea already had enough resources.

[9:30:45 AM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Tribal Affairs meeting was adjourned at 9:31 a.m.