

1 IN THE SENATE

BY POLLOCK AND ZIEGLER

2 SENATE BILL NO. 208

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to advisory opinions by  
7 the supreme court upon request of the  
8 governor, either branch of the legislature  
9 or the legislative council."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 \* Section 1. AS 22.05.010 is amended to read:

12 Sec. 22.05.010. JURISDICTION. The supreme court has  
13 final appellate jurisdiction in all actions and proceedings.  
14 The supreme court may issue injunctions, writs of review,  
15 mandamus, certiorari, prohibition, habeas corpus, and all  
16 other writs necessary or proper to the complete exercise  
17 of its jurisdiction. The supreme court shall give advisory  
18 opinions as set out in sec. 15 of this chapter. Each  
19 justice may issue a writ of habeas corpus, upon petition by  
20 or on behalf of any person held in actual custody and may  
21 make the writ returnable before the justice himself or  
22 before the supreme court, or before any judge of the superior  
23 court of the state. An appeal to the supreme court is a  
24 matter of right, except that the state shall have no right  
25 of appeal in criminal cases, except to test the sufficiency  
26 of the indictment or information.

27 \* Sec. 2. AS 22.05 is amended by adding a new section to read:

28 Sec. 22.05.015. ADVISORY OPINIONS. (a) The governor,  
29 either branch of the legislature or the legislative council

1 may require the advisory opinion of the supreme court upon  
2 important questions of law and upon solemn occasions.

3 (b) In this section

4 (1) "important questions of law" means

5 (A) the inquiring governor, branch of the  
6 legislature or legislative council has before it some  
7 question concerning which doubts exist as to the power  
8 or authority of that person or body or one of his or  
9 its subordinate officers; and

10 (B) the settlement of those doubts is neces-  
11 sary to permit intelligible action by the governor,  
12 the branch of the legislature or legislative council;

13 (2) "solemn occasion" means some serious and  
14 unusual exigency, when the inquiring governor, branch of  
15 the legislature or legislative council doubts his or its own  
16 constitutional or statutory power of action.

17 (c) An advisory opinion shall be confined in scope to  
18 specific questions posed and go only as far as the court  
19 considers necessary to aid in the performance of official  
20 duty, and may not extend to determination of questions of  
21 fact. The court may not be required to answer general  
22 questions as to constitutionality even with reference to a  
23 specific bill.

24 (d) Opinions shall not be given on questions which

25 (1) arise in the course of judicial administration,  
26 which cannot be affected by executive or legislative action;

27 (2) bear only upon the wisdom, policy or ex-  
28 pediency of proposed executive or legislative action;

29 (3) do not relate to statutory interpretation or

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

pending legislation or legislation being prepared for introduction by the legislative council; or

(4) relate to judicial review of criminal contempt cases.

(e) Advisory opinions cannot overrule adjudicated cases and they shall follow case law. Advisory opinions are not judicial decisions which are binding adjudications of the court, and if litigation should arise on a question of law covered in an advisory opinion, the court shall consider the question anew, unaffected by the advice given in that opinion.