

NO. 3

SB

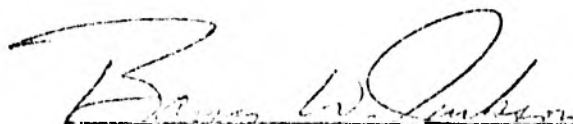
## Judiciary Committee Report

on

HCS for SENATE BILL NO. 364

This bill establishes a system of compensating victims of bodily crimes for their out-of-pocket expenses incurred as a result of the crime. One of the most fundamental functions of a government is the protection of its citizens; therefore, when the various statutory deterrents, law enforcement activities and conditions of the society fail to provide this protection, it is only reasonable that the government compensate the victims of that failure. Under present law, when the person who commits the crime is not financially responsible, the innocent victim who suffers the personal injury is left to his own resources. This obviously works an especial hardship on the poor and the elderly.

The bill is limited to personal injuries and to out-of-pocket expenses in order to avoid the likelihood of collusion. The total amount payable is limited, and the bill specifies additional limitations on and factors to be considered in awarding compensation. Information presented in an August 1969 report of the Arkansas Legislative Council indicates a rather low cost for such a system. In California, with a population of approximately 19,103,000, the 1967-68 fiscal year budget for the system was \$22,411; in the 1968-69 fiscal year the budget was \$105,374; and the proposed budget for the 1969-70 fiscal year was \$127,000. The costs rise as more people become aware of the availability of compensation for their injuries. According to the Arkansas report, as of early 1969, at least five states had enacted victim compensation systems such as this one, and at least six others and Congress (for the District of Columbia) were considering similar legislation. In the preparation of this bill, the relevant provisions in the law of Hawaii, California, Massachusetts, and Maryland were reviewed.



Barry W. Jackson

Chairman

House Judiciary Committee



# ALASKA NATIONAL BANK of Fairbanks

NORTHWARD BUILDING "The Friendly Bank" FAIRBANKS, ALASKA - 99701

April 20, 1970

To the Honorable Representatives Anderson,  
Bradner, Holm, Jackson, Miller, Orbeck and Young  
Alaska State House of Representatives  
Juneau, Alaska 99801

Gentlemen:

Senate Bill No. 403 "An Act Providing for the Collection and Deposit of State Money and the Collateralization of Deposits of State Funds; and Providing for an Effective Date" contains sections which would be extremely detrimental to the State of Alaska and to the banking institutions located within the State.

Section 1 (e) which states in part "the following, while not in default, if issued, made or created after January 1, 1970, constitute eligible collateral" is not only an untenable restriction but one that could be dangerous to the State and the banking institutions operating therein. We recommend that the State outline the types of collateral acceptable and establish a percentage of deposits to be covered thereby but completely eliminate any reference to date of origin of collateral meeting those requirements. Alaska National Bank, for example, holds \$5,385,000 of State deposits against which are pledged \$5,686,000 of U. S. Direct and Agency Obligations, State and Municipal Bonds, and FHA mortgages. Senate Bill 403 if passed would make ineligible every penny of the collateral which we currently have pledged and would require substitution as State Time Certificates mature starting May 26, 1970.

Included in Alaska National Bank's collateral are \$345,000 of State and Municipal bonds issued by the State of Alaska or by municipalities within the State of Alaska. Some of these were purchased, as for example Nome Bonds, at the request of the State. Is our State Administration now saying that Alaskan bonds are not acceptable quality. "Outside" investors would take a dim view of this attitude. Orderly and healthy expansion of Alaska's financial institutions is essential if the State is to continue to properly expand. No doubt most of the Alaskan banks are in the same position as Alaska National and to render all of Alaskan bank's collateral ineligible as State Time C.D.'s mature and are removed would create a catastrophic



PLEASE SEND ALL CORRESPONDENCE TO ALASKA VIA AIR MAIL

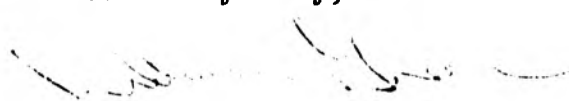


To the Honorable Representatives Anderson,  
Bradner, Holm, Jackson, Miller, Orbeck and Young  
Alaska State House of Representatives  
April 20, 1970  
Page 2

situation. We are in sympathy with the aims of the Administration to put to work for Alaskans deposits given to Alaskan banks but this is not the way to do it and in fact defeats the purpose as it could result in a withdrawal of State funds from Alaskan banks, not an increase. Dropping the collateral requirements to 35 per cent is the best approach to putting State money to work for Alaskans. The amount of collateral to be pledged should be based upon the dollar value of State deposits in each bank not on the total deposits held by each bank. Until the State allows banks to use 65 per cent of the State Time Certificate deposits without requiring back-up collateral the people of Alaska will not see the true benefit from those deposits. Every dollar of State deposits which a bank is required to tie up in collateral is in effect a sterile deposit as far as benefiting the people of Alaska.

We, therefore, recommend complete removal of any reference to issue date of acceptable collateral, and a reduction in percentage of collateral required to 35 per cent of State deposits.

Yours very truly,

  
William J. Green  
Vice President and Comptroller

WJG:js

**MEMORANDUM****State of Alaska**  
DEPARTMENT OF NATURAL RESOURCES

TO:  The Honorable Barry Jackson  
Chairman  
House Judiciary Committee

DATE : May 20, 1970

FROM: Thomas E. Kelly  
Commissioner

SUBJECT: SB 444

Pursuant to your request of May 19, the following list enumerates violations of park regulations that we have experienced and which are not enforceable under present statutes, thereby making passage of the captioned bill of utmost importance.

- (1) TRAFFIC VIOLATIONS - Excessive speed, reckless driving and other moving vehicle violations.
- (2) DURATION OF STAY - Camping in State wayside and recreation areas for periods in excess of the two week limitation. This deprives visiting tourists and Alaskan citizens of the opportunity to find room for camping in our parks. It is a particular problem in view of the influx of migrant, jobless workers and hippies who seek parks as their haven.
- (3) ILLEGAL USE -
  - (a) Camping and day use facilities which are not designed for overnight stay. These include picnic areas which are not set up for pitching tents or parking camp trailers.
  - (b) Erection of shacks and lean-tos which constitutes environmental intrusion.
  - (c) Misuse including sites for rallies. Regulations provide for permits to be issued under specific conditions for big gatherings. Abuse of this privilege in the absence of enforcement laws increases deterioration in our parks.
  - (d) Driving off of gravel paths and walkways or around barricades which we set up for safety purposes.
  - (e) Violations of water safety including driving power boats through swimming areas.
- (4) RESIDENTIAL GARBAGE - Accumulation of refuse and garbage in the parks as a result of nearby residents using trash barrels for their garbage disposal. The barrels and trash cans are placed in the parks for individuals using the park facilities. We do not have the means to provide residents garbage pickup and it is particularly onerous to have a dump site surrounding filled trash barrels.

The above list summarizes some of the problems we are continually faced with in park administration and maintenance. It is our desire and goal to provide the finest in park facilities for Alaskan residents and tourists. We believe that adoption of the captioned bill in the law will go a long way in achieving this goal.

The Honorable Barry Jackson  
May 20, 1970  
Page 2

The Legislature has recently adopted a similar law (Chapter 95 SLA 1970) to protect historic sites which I feel is analogous to the protection sought by this bill.

SB446

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M—JUNEAU 99801

April 14, 1970

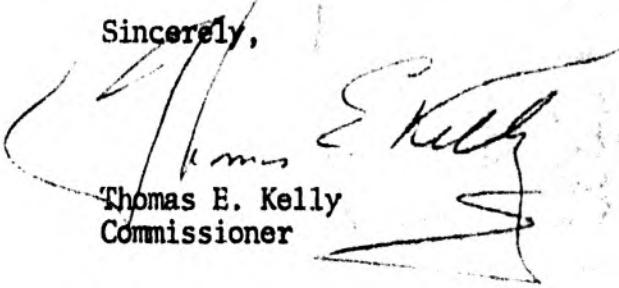
The Honorable Irwin Metcalf  
House of Representatives  
State of Alaska

Dear Representative Metcalf:

In response to your request regarding Senate Bill 446, this Department urges the passage of this bill as we feel the historic and scientific sites of interest in Alaska are valued by the public and measures should be taken to protect them from damage and abuse. The increase in fine from \$500 to \$1,000 is in order as this will more closely cover the cost of any damage to the sites and possibly prevent some future damage.

If any further information is required please advise as the enactment of this bill is needed.

Sincerely,

  
Thomas E. Kelly  
Commissioner

STATE OF ALASKA  
THE LEGISLATURE  
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99801

May 6, 1970

Barry,

Your CS for SB 475 is attached. However, at the point where you suggested changing "consider" to read "give due consideration to", I left "consider" in. First of all, the drafting manual (at p. 19) states "Use finite verbs instead of corresponding noun-or-adjective forms denoting action as: 'consider' instead of 'give consideration to'; 'know' instead of 'have knowledge of'." Secondly, the word "due", as an adjective, is quite inadequate. It is either used for its legalistic sound (in which case it should be dropped) or it is used as a more-or-less synonym for such words as "serious", "formal", "appropriate", "weighty", "lengthy", "proper", etc., (in which case the more accurate word should be used). It seems to me that the phrase "give due consideration to", in the instant situation, places no greater requirement on the court than the simple, direct word "consider".

Regarding sec. 4 in this final version, cf. AS 47.10.020(a), which allows for informal adjustment or disposal.

A.

Art

SB 475

43 Mile Steese Highway  
Box 5-309  
College, Alaska 99701  
April 17, 1970

Hon. Tury Anderson, Mike Bradner, John Holm, Barry Jackson,  
Gene Miller, Ed Orbeck and Don Young  
Alaska State House of Representatives  
Juneau, Alaska 99801

Dear Sirs:

SB 475

I feel so strongly about the "Christian Science Bill" that I am prompted to write you all as my Representatives from the 16th District.

Please consider this bill most carefully. To permit its passage, with the rider which states that a court could order medical care for a child whose parents refused because of religious convictions, would be a staggering blow to our religious freedom- a freedom that our forefather's emigrated here to achieve. It is contrary to the First Amendment to the Constitution of the United States. It is contrary to the spirit of freedom under which our country has developed and prospered for so many years.

Both religion and medicine have been free to try and gain; they have been free to try and lose. Because of the popularity of one system is the other automatically to be judged wrong because it is in a minority? Are we to prevent a minority from the full and free expression of their faith? Our country founded upon a spirit of fairness, how can this spirit survive when one's freedom of religion has been restricted?

Why not let time be the judge? Is the State of Alaska going to start judging a person's religion? It would seem that way by the court in effect saying, "you as parents because of your religious convictions, which the State finds archaic,

April 17, 1970

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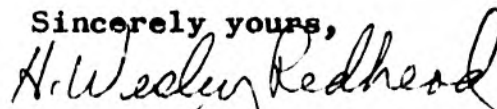
superstitious and totally ineffectual, are not mentally capable of caring for your child in a manner which the State regards as proper, therefore we are issuing a court order that the child be placed under medical care." In effect, the State is setting up a religion that all must follow.

Is medicine such an exact science that all men should now be forced to practice it? If medicine is such a science why are not all who go to a hospital healed? How many of those in graves today are there as the result of a mistake, a wrong diagnoses, or a wrongly prescribed cure? We continually hear about the successes of medicine, seldom its failures. It is the opposite with a healing religion- we hear about the failures, seldom the successes.

Human progress cannot have reached the point where the Alaska Legislature can now say, "Medicine and surgery are the only reliable remedial agents. Therefore, we will see that all citizens follow its dictates and practices, even if it conflicts with one's deepest religious convictions."

I sincerely urge you to consider your vote on this bill and in the spirit of freedom for trial and error, of freedom for the progress and improvement that our founding fathers guaranteed us in the Constitution vote against the restrictive rider to the bill.

Sincerely yours,



H. Wesley Redhead  
Box 5-309  
College, Alaska 99701

sent right letter  
4-29-70 - P.H. May 4  
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3/23/70

HOUSE JOURNAL

Judiciary Committee Report

on

HCS for SENATE BILL NO. 481

This bill is similar to Sec. 2015.5 of the California Code of Civil Procedure. It allows a person to "certify under penalty of perjury" certain documents required or authorized to be made upon oath, thus eliminating the need to have the document signed by a notary or other person empowered to administer oaths. The House Committee Substitute follows the California version more closely than the original bill, making clearer which documents are covered and which are not. The Senate amendment to the original bill restricts this certification to situations in which no notary or other authorized official is available, and this provision is retained in the House Committee Substitute; the bill, either with or without that amendment, would be of particular benefit to the outlying areas of the State.

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Barry W. Jackson  
Chairman  
House Judiciary Committee

LAW OFFICES OF  
FAULKNER, BANFIELD, BOOCHEVER & DOOGAN  
ROOM 201, 311 FRANKLIN STREET  
JUNEAU, ALASKA 99801

HERBERT L. FAULKNER  
NORMAN C. BANFIELD  
ROBERT BOOCHEVER  
FRANK M. DOOGAN  
DONALD L. CRADDICK  
AVRUM M. GROSS  
MICHAEL M. HOLMES

TEL. 586-2210  
AREA CODE 907

June 5, 1970

Mr. Barry W. Jackson, Chairman  
House Judiciary Committee  
State Legislature  
Juneau, AK 99801

re: SB 497 Am.  
Relating to Conveyances of Real Property

Dear Mr. Chairman:

The Juneau Bar Association has considered the above mentioned bill and has endorsed it. The members find there are many deeds of record made to married couples who intended or expected that the property would go to the survivor of them in case of death of one of them, whereas in fact it will not happen because they failed to specify that they took the property as tenants by the entirety. We do not believe this bill will have retrospective effect as to such deeds because we have a statute stating that no bill has retroactive effect unless it so states. Moreover, there have been many deeds purposely made to man and wife without the specification of tenants by the entirety because they wanted it that way for various reasons, the most common of which is to get a stepped-up tax basis by administration of the half interest of the deceased. We therefore object to any amendment making the bill retroactive.

As for future conveyances we approve the bill as we believe it will be better to make these poorly drafted conveyances create a tenancy by the entirety, and to state otherwise when the intention is otherwise.

The Juneau Bar has asked me to convey this information to you.

Yours very truly,

*N. C. Banfield*  
N. C. Banfield

NCB:rp  
cc: Shirley Kohls, Pres.



TELEPHONE  
586-1325

MUNICIPAL BUILDING  
JUNEAU, ALASKA 99801

March 16, 1970

The Honorable Barry Jackson  
Chairman, House Judiciary Committee

Dear Mr. Chairman:

Last Friday, SB 507, pertaining to powers of a 4th class city, was given a special referral to your Committee. Basically, this was done as a courtesy to the League in order that we could have the opportunity to clarify a couple of problems which we think the bill poses.

The League is 100% in favor of what the bill is trying to do insofar as 4th class cities are concerned. However, we recommend that the title of SB 507 be changed to read: "An Act relating to the powers of general law cities including but not limited to 4th class cities within 3rd class and unorganized boroughs". It is our opinion that the bill as presently titled is in direct conflict with the areawide platting concept of Title 7.

In addition, we are respectfully submitting a further proposed amendment to SB 507. This amendment has been endorsed by both the city and borough members of the League as a means of eliminating one area of conflict which has occurred in the past under the planning and zoning statute in Title 7.

We certainly wish to thank you for your courteous consideration of this matter and if we can be of further help, please call on us at any time.

Sincerely,

A handwritten signature in cursive script that reads "Don M. Berry".

Don M. Berry  
Executive Director

DB/mm

ALASKA MUNICIPAL LEAGUE

PROPOSED AMENDMENT TO

SENATE BILL 507

For an Act entitled: "An Act relating to vacation of public ways."

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

\*Section 1. AS 07.15.340 is amended by adding a new section to read:

(d) No street, alley, or public thoroughfare may be vacated under the borough planning, platting and zoning authority in its entirety or in part unless vacation is approved by resolution of the governing body of the city or organized borough, or both, in which the public way is located, except that vacation of a street, alley or public thoroughfare located entirely within a city shall require approval of the city governing body only.

\*Sec. 2. AS 40.15.160 is amended to read:

Sec. 40.15.160. HEARING AND DETERMINATION. At the hearing, the platting authority shall inquire into and determine the merits of the relief prayed for and make such order as justice and the public welfare require. Vacations ordered by the platting authority shall not be effective unless approved by the local governing body having jurisdiction as provided in AS 07.15.340(d).

March 20, 1970

Mr. Gregory Machyowsky  
Legislative Affairs Agency  
Pouch "Y", Capitol Building  
Juneau, Alaska 99801

Dear Greg:

SB-507 has been referred to the House Judiciary Committee and I am researching this bill.

Enclosed is a copy of a letter and a proposed amendment of the Alaska Municipal League. Would you please review this material and the bill and be prepared to review it with me at an early date? I see a number of problems with the bill.

With respect to vacating streets, a fourth class city should also have the power to close streets and use them for other public purposes, otherwise vacation may simply cause the property to pass to the adjoining property owners.

In the area of bonding, it is difficult to see how a fourth class city could issue general obligation bonds since the power to levy a property tax seems to be, by definition, a part of the concept of government obligation bonding.

As city attorney of Fort Yukon, I wrote Local Affairs Agency on the bonding problem, laying out a number of problems. That letter may also be of assistance to you in reviewing this bill.

Sincerely,

Barry W. Jackson, Chairman  
House Judiciary Committee

Enclosures - AML correspondence  
Proposed amendment for SB-507

STATE OF ALASKA  
THE LEGISLATURE  
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99801

March 18, 1970

MEMORANDUM

TO: Representative Barry Jackson  
FROM: Hayden Kaden  
SUBJECT: Abortion

AS 11.15.060 provides Alaska's abortion law in these terms: "A person who administers to a woman pregnant with a child any medicine, drug, or substance whatever, or who uses an instrument or other means, with intent to destroy the child, unless the action is necessary to preserve the life of the mother, is, if the death of the child or mother is thereby produced, guilty of manslaughter," and is punishable accordingly."

This statute was adopted by the Congress for the Territory of Alaska in the 1880's. It was taken from the Oregon Criminal Code and, but for minor wording changes, is identical to the present Oregon law, (ORS 163.060). The Oregon Supreme Court interpreted the term "death of the child" in the case of State v. Atwood, 102 P. 295 (1909). The court stated:

"The term 'in case of death of such child,' which constitutes the consummation of the crime equally with the death of the mother, would seem to mean the death of the foetus, either before or after quickening."

The court also stated that an interpretation of the term "pregnant with child" was not necessary to its decision. However, according to the revisor's notes on the Oregon statute, the court in Atwood and in State v. Ausplund, 167 P. 1019 (1917), said that the term "pregnant with child" designates the fetus throughout the period of gestation.

The courts of the states are not in harmony concerning the interpretation of "pregnant with child" (Accord, 1 Alaska 2d, sec. 6, p. 191.) Some have held with the Oregon court and others, including the Alaskan courts, have held that the fetus must be "quick" in order to be a child.

Thomas Aquinas, in the 13th Century, defined the soul as the first principle of life in those things that live, and life is signalized by two actions: knowledge and movement. Hence the rule of the common law framed by Bracton, a 13th Century jurist, that life does not commence at a certain number of days after conception, but at the moment of "quickening". Therefore Bracton said that killing the fetus after "quickening" was murder, before "quickening", no crime. Previous to

March 18, 1970

1803, abortion appears to have been largely regarded as a Church offense and was in actuality punishable only by religious penalties, at least in England. ("The Legal and Moral Status of Therapeutic Abortion", by Alan F. Guttmacher, M.D., from Progress in Gynecology, Vol. IV.)

The first English abortion statute, the law of 1803, removed the legal requirement that to be a crime abortion must be performed after "quickening." It made a distinction, however, between the "unquickened" and "quickened" fetus. Abortion was a felony in every instance, but punishable by death only after "quickening". (Guttmacher)

The first state in the United States dealing directly with abortion was Connecticut, which in 1821 passed a statute punishing any attempt to abort a fetus by poison after "quickening." In 1860, the law was extended to all pregnancies irrespective of "quickening" and for the first time an exception was made for acts necessary to preserve the life of the mother. (Guttmacher)

Quoting from retired Supreme Court Justice Tom Clark in the Loyola University Law Review (Vol. II, No. 1, 1969) in answering the question of whether abortion is murder, he says, based on legal precedent, "To say that life is present at conception is to give recognition to the potential rather than the actual..." "No prosecutor has ever returned a murder indictment charging the taking of the life of a fetus. This would not be the case if the fetus constituted human life."

While it is not known what interpretation of the term "pregnant with child" would be adopted by the Alaska Supreme Court if that issue were presented, an instruction was rendered in State v. Boswell, 61-109, Superior Court, 4th Jud. Dist. (1961) to the following effect:

"'Pregnant with child' as used in our law means an unborn child so far developed as to be quick, that is, so far developed as to be capable of independent moving or stirring in the mother's womb to a degree perceivable by the mother. The law does not require that the mother in fact identified the movement or stirring; quickening is attained when movement, however slight, could be made to said degree by the foetus independent of any other force."

In another case, in 1958, an indictment for abortion against a doctor in Anchorage was dismissed because the foetus existed for only one month when it was aborted by the doctor and therefore the woman was not pregnant with "child".

The Alaska Attorney General's office has stated in an informal opinion that "since 'quickening' normally does not take place until approximately the fourth month of pregnancy, this interpretation emasculates the abortion law of this state. It is foreseeable that this instruction (that given in Boswell) will continue to be given, and, while the Department of Law would advocate a contrary position, the state could not appeal the issue to the Supreme Court and a binding interpretation may never be made." (Letter to John Sackett, April 25, 1969).

In regard to the possible constitutional problems with Alaska's abortion law, assuming its applicability to all abortions, there have been several recent cases of importance bearing on the constitutional issues. Two decisions are of particular importance.

In State v. Belous, 458 P. 2d 194 (1969), the California Supreme Court held, under a statute similar to Alaska's, that the phrase, "unless the same is necessary to preserve her life," is unconstitutionally vague. The court said that the requirement of a reasonable degree of certainty in legislation, especially in the criminal law, is a well established element of the guarantee of due process of law. No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids.... a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.

The problem caused by the vagueness of the statute is accentuated because under the statute the doctor is, in effect, delegated the duty to determine whether a pregnant woman has the right to an abortion and the physician acts at his peril if he determines that the woman is entitled to an abortion. Rather than being impartial, the physician has a direct, personal, substantial, pecuniary interest in reaching the conclusion that the woman should not have an abortion. The delegation of decision-making power to a directly involved individual violates the 14th Amendment. The statute assumes to confer legislative authority upon those who are directly interested in the operation of the regulatory rule. The inevitable effect of such delegation may be to deprive a woman of an abortion when under any definition of the relevant section of the penal code, she would be entitled to such an operation, because the state, in delegating the power to decide when an abortion is necessary, has skewed the penalties in one direction: no criminal penalties are imposed when the doctor refuses to perform a necessary operation, even if the woman should in fact die because the operation was not performed.

The U. S. District Court in the District of Columbia, in U.S. v. Vuitch, 305 F. Supp. 1032 (1969), struck down the D.C. abortion statute. The court said that the statute making the inducing of an abortion a felony, unless done to preserve the mother's life or health, is invalid for failure to give that certainty which due process of law considers essential in criminal statutes and for impinging to an appreciable degree on significant constitutional rights of individuals. The statute does not prohibit all abortions. An abortion is permitted where done as necessary for the preservation of the mother's life or health and under the direction of a competent licensed practitioner of medicine.

The word "health" is not defined and in fact remains so vague in its interpretation and the practice under the act that there is no indication whether it includes varying degrees of mental as well as physical health. The jury's nonacceptance or acceptance of an individual doctor's interpretation of the ambivalent and uncertain word "health" should not determine whether he stands convicted of a felony, facing imprisonment. There is no clear standard to guide either the doctor, the jury or the court. No body of medical knowledge delineates what degree of mental or physical health or combination of the two is

required to make an abortion conducted by a competent physician legal or illegal under the code.

Two other cases are of interest in light of the constitutional issues, both of which were relied upon by the Attorney General's office, in an informal opinion to Terry Miller and to Lowell Thomas, Jr., to conclude concerning Alaska's law that, "there are adequate legal arguments and decisions supporting the constitutionality of Alaska's current abortion law", and the Attorney General "would not be hesitant to carry out our statutory duty of defending its constitutionality if the issue should ever be raised in court."

A careful reading of both of these opinions cited by the Attorney General does little to dispel the notions of unconstitutionality raised by Belous and Vuitch, regardless of the Attorney General's opinion. In State v. Elliott, 383 P.2d 382 (Ore. 1963), the Supreme Court of Oregon reversed for a new trial the conviction of an abortionist. Reversal was on the basis of an erroneous jury instruction and that portion of the decision is not cogent to this discussion. The Attorney General's office relied for its above stated conclusions on a one sentence statement by the court that, "the defendant's arguments are so lacking in merit that we decline to consider them, except to state that, construing the acts together, they do not violate any requirements or provisions of either the state or federal constitutions." On what specific grounds the defendant argued the constitutional issues is not clear. He merely contended that because the Manslaughter by Abortion Act and the Medical Practice Act have been construed in pari materia when a physician is involved, the Abortion Act as applied to him, violates the 14th Amendment of the U. S. Constitution and Article I, Sec. 20, Article IV, Sec. 23(2) of the Oregon Constitution. It is presumed that he relied on an equal protection argument because one of the Oregon Constitutional sections deals with equality of privileges and immunities of citizens and the other prohibits the legislature from passing local or special acts for the punishment of crimes. Neither of these arguments were at issue in Belous or Vuitch and the abortionist raised none of the vagueness or privacy questions which were raised in those cases. Another distinction here is that Elliott was not a physician, as was the case in Belous and Vuitch, and thus could not take advantage of the Medical Practice Act exceptions to abortion prosecution, i.e., to preserve the health of the mother.

The other case relied on by the Attorney General's office was State v. Moretti, 244 A.2d 499 (N.J. 1968). The Supreme Court of New Jersey upheld the conviction of two defendants, neither of whom were physicians, for conspiracy to commit abortion. Once again, the relevancy of this case to a disposition of the constitutional issues raised by Alaska's abortion law, is highly in doubt. The New Jersey abortion statute reads as follows:

"Any person who, maliciously or without lawful justification, with intent to cause or procure the miscarriage of a pregnant woman, administers or prescribes or advises or directs her to take or swallow any poison, drug, medicine or noxious thing, or uses any instrument or means whatever, is guilty of a high misdemeanor."

The defendants claimed that the law was so vague and indefinite that it suffers a constitutional infirmity. This is based on the language, "without lawful justification," which, it is argued, is so indefinite a concept that no one could tell when an abortion would be justified. The court said that a construction of the phrase which confined the meaning to the preservation of the mother's life would avoid any constitutional attack based on vagueness. The court then briefly discussed the fact that this construction had been upheld in previous New Jersey cases and it discussed several dissenting opinions as well. In so doing, the court said, regarding Chief Justice Weintraub, who dissented here also, that only he "expressed doubts as to the constitutionality of the statute, but his discussion related solely to the statute's application to eugenic abortions." The court then said that "the concern for a re-examination of the values represented by the law of criminal abortion is reflected in the recent creation by the legislature of a commission to re-evaluate the abortion statute. However, in the circumstances of the case before us, the ascertainment of the perimeter of lawful justification is not presented and we need not concern ourselves with the questions...." Thus the court stated that it would not even reach the broader constitutional issues presented by the phrase "lawful justification."

However, the court did say that the only inquiry in this case was "whether the defendants had sufficient warning that their conduct was criminal". "(A) defendant whose conduct was such that he clearly could tell that it was prohibited will not be heard to say that the statute is overly broad and that another, in some hypothetical case, could be misled." (emphasis mine.) "If, therefore, the statute gave sufficient warning to these defendants that the abortion they contemplated was not lawfully justifiable and thus was criminal, the statute is constitutional as applied to them." (emphasis mine) "That in some other case where the facts require it, we might be called upon to determine the specific limits of the statutory exception for abortions performed with lawful justification -- or to deal with a constitutional challenge made by a defendant claiming he was not adequately warned of the criminality of his conduct -- is of no aid to these defendants if their conduct was such as clearly fell within the prohibition of the statute."

The court then concludes that the defendants could not fail to be aware that the abortion would violate the statute. The defendants also offered no argument of lawful justification before the lower appellate court. In this court the defendants contended that they believed the abortion lawfully justified because it was to terminate an allegedly unwanted pregnancy. The court stated that if this was a lawful ground the statute was rendered meaningless because any abortion would be justified. It further stated that if there were any doubt that the defendants knew their actions were unlawful, it would be dissipated by their surreptitious actions revealed by the record.

Thus the court begs the larger constitutional issues because they are not presented for determination and because they can uphold the defendants' convictions and uphold the validity of the statute on narrower grounds. This is hardly good precedent for upholding the constitutionality of the New Jersey abortion law, much less Alaska's, under a broad-based constitutional attack in the proper circumstances (such as those in Belous and Vuitch), and the court so much as admits it.

Barry Jackson

-6-

March 18, 1970

Logic and good precedent, I believe, are on the side of any person, especially a physician, who would attack Alaska's law on void for vagueness and even right to privacy grounds.

HK:ic

March 2, 1970

The Honorable Terry Miller, Chairman  
Senate Judiciary Committee  
Alaska State Legislature  
Juneau, Alaska

and

The Honorable Lowell Thomas, Jr., Chairman  
Senate Health, Education and Welfare Committee  
Alaska State Legislature  
Juneau, Alaska

Dear Senators:

In response to your request of February 24, 1970, our office has reviewed the case law pertaining to the constitutionality of abortion laws similar in language to that contained in AS 11.15.060. While there are two recent decisions which held the phrase "necessary to preserve the life" of the mother unconstitutionally vague, for the reasons noted below we do not believe it is possible to assert with any reasonable degree of certainty that Alaska's Supreme Court would concur with those decisions.

The two cases referred to are People v. Belous, 80 Cal. Rptr. 354 (1969), and United States v. Vuitch, 305 F. Supp. 1032 (1969). Each of these cases interpreted an abortion statute that for our purposes is identical to Alaska's which reads as follows:

A person who administers to a woman pregnant with a child any medicine, drug, or substance whatever, or uses an instrument or other means, with intent to destroy the child, unless the action is necessary to preserve the life of the mother, is, if the death of a child or mother is thereby produced, guilty of manslaughter, and is punishable accordingly. (Emphasis added)

Each court determined that the phrase "necessary to preserve" is unconstitutionally vague.

Misc. 100

The Honorable Terry Miller and  
The Honorable Lowell Thomas, Jr.

March 2, 1970

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Belous, decided by the California Supreme Court, was a four to three opinion and Vuitch, a Washington, D. C. case, was a memorandum opinion written by one judge.

As one of the dissenting opinions in Belous pointed out, the phrase "necessary to preserve" is or has been in the abortion statutes of many states for over a century and was even employed at common law, and implicit in the countless decisions that have dealt with such language is the view that the phrase is not unconstitutionally vague. Belous at 367 (Burke J. dissenting).

In State v. Elliott, 383 P.2d 382, 384-5 (Ore. 1963), the Supreme Court of Oregon held that Oregon's abortion law, which contains the same "necessary to preserve" standard as Alaska's abortion law, does not violate the United States or Oregon constitutions. Although "vagueness" is not discussed as such, this Oregon court found the defendant's arguments relating to due process "so lacking in merit, that we decline to consider them, except to state that [the abortion law of Oregon] does not violate any requirements or provisions of either the state or federal constitutions." Id. at 384. Furthermore, a recent New Jersey opinion specifically stated that the statutory standard in abortion statutes of "necessary to preserve the mother's life" is not unconstitutionally vague. State v. Moretti, 244 A.2d 499, 504 (N.J.), cert. denied, 393 U.S. 952, 89 S. Ct. 376 (1968).

In this regard it is interesting to note that the majority in Belous was not able to cite any authority for its conclusion that the term "necessary to preserve [the woman's] life" is impermissibly vague. Belous at 370. The judge in Vuitch was able to cite only Belous. Vuitch at 1034. It should also be noted that neither of these two decisions are binding on Alaskan Courts. The United States Supreme Court has recently denied review of the Belous decision, 38 U.S.L.W. 3313, just as it had refused the year before to hear the New Jersey abortion law case of State v. Moretti, supra. Such action allows each state to decide for itself the constitutional issue in question.

In summary, this office believes there are adequate legal arguments and decisions supporting the constitutionality of Alaska's current abortion law. Thus, we would not be

The Honorable Terry Miller and  
The Honorable Lowell Thomas, Jr.

March 2, 1970

- 3 -

hesitant to carry out our statutory duty of defending its  
constitutionality if the issue should ever be raised in court.

Sincerely,

G. Kent Edwards  
Attorney General

GKE:jt

THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

# STATE OF ALASKA

SB 531  
WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K, STATE CAPITOL — JUNEAU 99631

October 2, 1968

### M E M O R A N D U M

TO: Board of Chiropractic Examiners  
Clarence O. Risch, D. C., President  
Dr. Norma Godfrey, Vice President  
D. L. Hammond, D. C., Secretary

FROM: G. Kent Edwards  
Attorney General

By: <sup>WEC</sup> William Edward Spear  
Assistant Attorney General

RE: License of one Burger

SB 531

This memorandum deals with certain questions raised by members of the Board of Chiropractic Examiners concerning their powers and duties in issuing licenses to practice chiropractic in Alaska. Letters from all members of the board reveal the following facts and lie at the basis of the opinion stated herein.

#### FACTS:

One Burger and one Kary applied for licenses to practice chiropractic in the State of Alaska. Said applicants both attended Western States College; said Burger graduated from the school while said Kary apparently completed his work at another school and did graduate work only at the school and postgraduated. All members of the board approved said Kary's license which is not in issue here, but one member of the board refused to sign said Burger's license because she felt that Western States College does not fall within the ambit of AS 08.20.120(4) as an "accredited" school or college of chiropractic.

Western States College is located in Oregon and is licensed in that state to award chiropractic degrees. Likewise, it is licensed to train individuals for certain laboratories and issue lab and x-ray certificates to such individuals. The institution is approved by the Veterans Administration for veterans training in the profession; likewise, the Oregon Rehabilitation and Immigration authorities approve the institution to train foreign students. Dr. V. E. Marsh, President of the Alaska Association of Chiropractic Physicians and past president of the Board of Examiners states that the Board has approved Western States for all of the 15 years he has practiced in Alaska.

The objecting Board member is reluctant to issue the license because Western State does not appear on a list of "accredited" schools prepared by either of two accrediting agencies, to wit: the American Chiropractic Association or the International Chiropractic Association. It is stated that these two agencies evaluate chiropractic colleges and institutions on separate lists which do not overlap. It appears that the American Chiropractic Association at one time granted a provisional accreditation which was later rescinded. Since that time neither agency has granted accreditation.

QUESTION:

From the facts stated above may the Board lawfully issue a license to practice chiropractic in the State of Alaska to one Burger?

OPINION:

"AS 08.20.090. QUORUM OF THE BOARD. A majority of the board constitutes a quorum for the transaction of business."

"AS 08.20.120. QUALIFICATIONS OF APPLICANTS. Each applicant shall

\* \* \*

(4) be a graduate of a legally chartered accredited school or college of chiropractic, approved by the board, which requires for graduation a residence course of instruction of not less than four years of nine months each; . . ."

It is unquestioned that the legislature has the power to regulate the practice of chiropractic because of its importance to the health, welfare, and safety of the citizens of Alaska. Neither is it questioned that the legislature may delegate this power of regulation to a board of administrators and/or examiners as long as the power it grants does not exceed its own. Conversely the board so created may not overstep the powers granted it by the legislature and it is precisely this point that is here drawn into question.

The boundaries of administrative discretion which the board may exercise in the prosecution of its business and duties are drawn by the language of the statute. In determining what

latitude the legislature granted the board in determining who could qualify for a license one must turn to AS 08.20.120, since qualifications are more clearly defined than others. For instance with respect to AS 08.20.120(1) the legislature has left the board little discretionary power; each applicant must be at least 21 years of age. Should the board issue a license to someone 18 years of age, it would constitute a clear breach of discretion.

However, AS 08.20.120(4) is not as definite as (1) and leaves the board much more discretionary power. This is not because the legislature could not be more definite in determining what constitutes an accredited school. In our Integrated Bar Act, for instance, one of the qualifications of an applicant is that he must have graduated from a school "approved by the American Bar Association." AS 08.08.130(4). The legislature, we must assume, may have provided if it so wished that the applicant have graduated from a school accredited by the American Chiropractic Association or the International Chiropractic Association or any other evaluating agency or body. The fact is that it did not. The only specific requirement the legislature requires other than that it be a "legally chartered accredited school or college of chiropractic, approved by the board," is that its requirements for graduation include a residence course of instruction of not less than four years of nine months each.

Therefore, in the lack of more positive language we must assume that the board is granted some discretion in determining what a "legally chartered accredited school or college of chiropractic" might be. It would seem that the words "approved by the board," set off by commas after the descriptive phrase does not grant ultimate, unfettered, positive power of determining accreditation to the board but rather is an additional requirement to be met after the accreditation has been established. It appears from the facts presented that Western States College of Chiropractic is legally chartered by the State of Oregon, which leaves only the word "accredited" to be given meaning.

It seems that "accredited" means something more than merely licensing or chartering, for those words were both available to the legislature when it enacted the section. Moreover, under this section the school in question must be both chartered and accredited; giving separate meaning to each work, "accredited" must mean something beyond "chartered." Licensing grants permission whereas accrediting usually connotes achievement of high standards and the resulting recognition.

As previously noted herein, the legislature could have chosen to dictate that some national agency set the standards of accreditation, or they could have insisted that in order to be accredited, a school must appear on some national list. This they did not do. We do not feel that the legislature intended accreditation or the power to accredit to lie exclusively with any particular body. A more reasonable position is that "accredited" means some recognition beyond mere chartering, by any entity. "Accredited" means authoritatively approved. Certainly, a national evaluating agency could be an authority and the board would be correct in considering its approval. However, the Veterans Administration or the Oregon Rehabilitating and Immigration authorities may also be considered accrediting entities, and their approval could qualify as an act of accrediting.

The final requirement after chartering and accrediting is for the board itself to approve of the school. If the board wishes to agree with the accreditation given by another entity it will grant its approval. Here it would appear that a majority of the board does recognize Western States not only as being chartered, but sufficiently accredited as well, and has approved the institution as meeting the standards necessary for licensing a chiropractor in the State of Alaska.

GKE:WES:rw

*random on the campus.*

*A copy of their findings, with permission to publish was sought by Dr. George Haynes, Administrative Dean of the LACC.*

*The following report was submitted, and is published as received from the legislative committee, in full text and with no editing.*

Ed.

#### **SUB-COMMITTEE REPORT**

**Chiropractic Study Tour  
December 3-9, 1967**

The following is the report of Sub-Committee No. 3 of the State Affairs Committee for the period December 3 through December 8, 1967, in the study of Chiropractic Laws and Practices. The Sub-Committee consisted of: Representatives DeForest Strang, Chairman, Federic J. Marshall, Vincent J. Pettipren, and Thomas J. Anderson.

The study consisted of a review of chiropractic instruction, at selected colleges, as to duration, entering qualification, curriculum, and graduation requirements, and of a chiropractic hospital, with emphasis on type and efficacy of care. The study resulted from the confusion of testimony during committee hearings on Senate Bill 227 and hearing testimony, as well as floor debate during a prior session regarding 1966 House Bill 3381. An apparent conflict in the chiropractic profession was demonstrated in testimony, and an antipathy as well as a non-tolerance toward chiropractic generally was exhibited by members of the medical profession appearing before the committee.

The sub-committee was received cordially at three study locations, the Palmer College of Chiropractic in Davenport, Iowa, the Spears Chiropractic Hospital in Denver, Colorado, and the Los Angeles Chiropractic College in Glendale, California. Full assistance was given the committee in display of facilities and response to interrogation, and no objection was passed at any time to the use of the tape recorder during interviews of staff and faculty personnel.

The committee determined that chiropractic is divided by a schism of two conflicting philosophies, which ap-

#### **MICHIGAN LEGISLATIVE INVESTIGATORS REPORT ON CHIROPRACTIC EDUCATION.**

*In December 1967, a committee of legislators from the State of Michigan visited Los Angeles College of Chiropractic, as a part of an inspection tour which included Palmer College of Chiropractic at Davenport, Iowa, and the Spears Chiropractic Hospital at Denver, Colorado.*

*The purpose of the investigation was to learn first hand about the education of the chiropractic physician, and the practice of chiropractic, so that this information could be given directly to the Michigan legislature. At LACC, the committee inspected the plant, sat in conference with the administration and the faculty, and conducted interviews at*

parently contributes to non-acceptance by other professions.

The basic chiropractic philosophy, that originated in about 1895, holds that bodily health is controllable solely by proper nutritional balance, good physical habits, and the correct alignment of the several vertebra of the spine and the correct relationship of the vertebra to the central spinal cord and ancillary nervous system. There is heavy reliance on the use of X-ray for examining the patient's spinal system. The majority of the practitioners of this philosophy, numbering about 12% of the profession, are graduates of the Palmer College in Davenport. It is the committee's understanding that two or three other small chiropractic colleges in the United States also teach on the Palmer philosophy, based almost entirely on the spinal manipulation and suggestion to the patient of good habits and diet supplementation.

In this method, little work is done on human structural members other than the spine itself, and there is only limited attempt at diagnosis and use of the diagnostic tools used by the medical physician. This segment of the profession opposed House Bill 3381 in 1966. The committee was advised that it was felt the bill tended to authorize the unwarranted expansion of the chiropractor into the diagnostic and medical fields and could contribute to ultimate discrediting of the profession by medical authorities, with possible future punitive legislation. Members of this group are affiliated with the International Chiropractic Association.

The major portion of the members of the profession (about 88%) are graduates of more liberal colleges of chiropractic, of which the Los Angeles College of Chiropractic is an example, and are affiliated with the American Chiropractic Association. This group (ACA) professes a belief in the need for diagnostic appraisal of the patient's general and specific condition, full use of diagnostic tools, such as those used by the physician, and in manipulation of body extremities and joints other than the spine in addition to the correct alignment of vertebra and diet and health control acknowledged by the adherents to the more conservative ICA methods

of practice. Approximately seven chiropractic colleges are instructing in this philosophy.

The Palmer College at Davenport is a full four-year institution providing full education in the basic sciences and approximately two years of classroom and clinical training in manipulative therapy directed at the spine. Special attention is paid to the study of the nerves and nervous system and its relationship to the spinal column. At Palmer, it is taught that most bodily malfunctions and disorders, and some diseases, can be corrected by chiropractic adjustments to correct spinal "subluxations" or vertebral misalignments which might cause interfering pressure on portions of the central nervous system affecting all parts of the body. The faculty stated it is their firm belief and teaching that proper nutritional and dietary control, and regular health habits, combined with correct functioning and alignment of the spinal column members, would assure optimum health in an individual and prevent bodily disorders.

Only minimal effort is made to instruct in recognition of bacterially or virally borne diseases. One year pre-medical training is preferred for entrance at Palmer, although a ninety-day pre-prep course in general sciences is given to entrants not having this qualification. The committee was advised that effective January, 1969, a two-year pre-med course would be requisite to admittance.

The Los Angeles College of Chiropractic, affiliated with ACA, is also a full four-year institution, requiring one year pre-medical instruction for admission. As at Palmer, full instruction is given in the basic sciences, and in the chiropractic manipulative technique. In addition, much attention is paid to diagnostic analysis of human ailments, and to the use of normal medical diagnostic devices and to various therapeutic treatments. Unlike Palmer, where nerve study and dissections are performed on animal carcasses (by reason of a limiting Iowa statute), at Los Angeles College of Chiropractic, human cadavers are used for laboratory study. The committee noted that the curriculum at the Los Angeles institution included a broader treatment of the generally accepted

medical theories than at Palmer, where the efficacy of spinal chiropractic was held paramount over all other medical treatments. It appeared that the Los Angeles College (and ostensibly other college affiliated with ACA) treated chiropractic as an important branch of the medical sciences, to be ancillary to other phases of the treatment of human disorders, and at Palmer (and ostensibly other ICA affiliated colleges) that simple spinal chiropractic manipulation was treated as the primary and most effective treatment of ailments, with the medical practices of other branches of the sciences of lesser importance. This philosophical difference is the apparent chief cause of the schism in the profession of chiropractic.

Both institutions are seemingly adequately equipped in both staff and facilities to perform their function. The professional staff of both institutions appears competent as to background, based on the citations contained in the catalogues, and auxiliary personnel such as technicians, laboratory instructors and administrative aides, although not interviewed, were cited as competent. Facilities in both institutions include modern classrooms, laboratories, practice rooms, public clinical, limited medical library, and modern instructing devices and equipment.

There is one recognized chiropractic hospital, that being Spears Chiropractic Hospital at Denver, Colorado licensed by the State of Colorado. The hospital is affiliated with ACA and was founded in the 1940's by Dr. Leo Spears, now deceased, and currently operated by Drs. Daniel C. and Howard M. Spears, and has survived a long series of legal battles for existence under Colorado law. Approximately 130,000 patients have been treated since founding, many reportedly with startling success after the failure of other professions and hospitals to effect relief or cures. The committee viewed the hospital and was impressed with the seeming efficiency and effectiveness of the treatments given. Diagnosis is made of the condition of the entire body, and on the use of various traction and non-medical therapeutic devices for orthopedic and muscular adjustments. No medicines are administered at the hospital, nor is any

surgery performed, except occasionally by invited outside medical physicians in emergency situations. All staff members are chiropractic personnel and there is strong reliance on the chiropractic adjustment as corrective and preventative therapy.

The facilities of the hospital include a pediatrics ward, which was reported to have had remarkable effectiveness in certain crippling disabilities, and a number of muscle building and therapy devices for assistance in recovery of atrophied members and limbs. The hospital maintains a regular schedule of advertising publications, mailed to the profession, and to the public. The circulars include citations and testimonials of successful treatments at the hospital and general advertising for the chiropractic treatment.

In summary, the committee found that members of the chiropractic profession are well trained in professional techniques and basic sciences and knowledge as to human anatomy. It is believed that both philosophies (ICA and ACA) represent the ability of members of the profession to perform an important adjunctive service in the treatment of human disorders. The committee feels, however, that there is an excessive reliance in the ICA or Palmer concept on the efficacy of the spinal manipulation to correct and maintain bodily health. On the other hand, the ACA adherents would seem to move markedly close to the practice of medicine in its diagnostic and therapeutic actions on the human body.

Rep. DeForest Strang  
Chairman  
Rep. Frederic J. Marshall  
Rep. Vincent Pettipren  
Rep. Thomas J. Anderson

#### GET WELL SOON!

Dr. Josephine Stiers Tennyson, who has been very ill, is now convalescing nicely at home and would really appreciate hearing from all of her friends around the State. Get Well soon Dr. Tennyson!

NEW CRITERIA AND ANALYSIS THEREOFACCREDITATION

From two conferences (June 9 and July 14) with the Staff of the Accreditation and Institutional Eligibility Unit of the U.S. Office of Education (John R. Proffitt and Ronald Pugsley) and from two documents provided by them (Exhibit A - "List of Nationally Recognized Accrediting Agencies and Associations" and Exhibit B - "Examples of Documentation of the Criteria for Nationally Recognized Accrediting Bodies") some basic concepts become very clear:

1. Specialized agencies designed to accredit professional institutions are not carbon copies of regional agencies designed to accredit college programs in the arts and sciences. (Exhibit A - Page 1, last two paragraphs)
2. An accrediting agency designed to accredit institutions preparing students for careers in a profession cannot divorce itself from that profession and operate in isolation. (Exhibit A - Page 1, paragraph 3, item 1; Exhibit B - Page 1, item 1, line 5; Page 2, item 4, (2); Page 4, item 11, lines 10 and 11)
3. The institutions must be centrally and significantly represented in the processes of accreditation. (Exhibit A - Page 1, paragraph 3, item 1)
4. The current trend is for representation from the general public. (Exhibit A - Page 1, next to last paragraph, line 4)
5. In the case of professions that require legal licensure or certification, representation from licensing bodies is desirable. (Exhibit A - Page 4, criterion 11; Exhibit B - Page 4, item 11, lines 6 and 7)
6. "It is unlikely that more than one association or agency will qualify for recognition." (Exhibit A - Page 4, next to last paragraph)
7. Only high standards of qualities are acceptable.
  - a. Admissions standards
  - b. Faculty qualifications
  - c. Faculty-student ratio
  - d. Facilities
  - e. Financial stability

(Quality was a major, if not the major, item stressed by the U.S. Office of Education staff in our two conferences.)

With these facts in mind, it appears logical to conclude that an accrediting agency composed of representatives of the institutions, the profession, the licensing bodies and the public would be acceptable provided there was only one agency extant, provided the minimum standards were high enough and sufficiently clear, and provided performance of the agency is qualitatively in line with the performance of similar national accrediting agencies.

HB 531

SUGGESTED QUESTIONS TO DR. HAMMOND AND OTHERS

1. Do you feel it is not being discriminatory to choose applicants only from one association?
2. What chance would there be for Board members to be chosen for membership of the Alaska Chiropractic Society?
3. What about doctors who might wish to serve on the Chiropractic Board but don't agree to belong to any organization?
4. Are there two national accrediting agencies?
  - a. Do they make constant evaluations of the respective colleges?
  - b. What is the purpose of these national accrediting agencies?
  - c. When they decide to accredit or discredit a college, is this for the purpose of forcing those colleges to improve their image so that chiropractic colleges raise their standards to that of medical schools, etc.?
5. What college are you a graduate from, Dr. Hammond?
6. Does the International Chiropractors Association fully accredit Western States College?
  - a. Does the American Chiropractor's Accrediting Agency fully accredit your college?
  - b. Is it accredited at all by either of these agencies?
  - c. Does Washington state allow graduates from your college to apply for a licensure in that state at the present time?
  - d. Do you feel Alaska should allow these graduates to come here when Washington state feels they should be kept out?

- e. Do you feel you are better qualified to judge the merits of the many chiropractic colleges than the national accrediting agencies?
- f. Are any of the present board members from colleges fully accredited by either of the national accrediting organizations?
- g. How many members of the Alaska Chiropractors Association are graduates from the unaccredited college you are from?
- h. How many members of the Alaska Chiropractors Association are graduates from fully accredited chiropractic colleges?
- i. How many paid up members are there in the Alaska Chiropractors Association?
- j. Are the four members of the Alaska Chiropractic Society and the student members at the Palmer College of Chiropractic from a fully accredited college, accredited by either national organization?
- k. If graduates from unaccredited colleges can become licensed, what assurance do you have that that college will ever raise their standards sufficiently to become fully accredited?
- l. Would you object to having the chiropractic board chosen by the Governor, as in the past?
  - (1) Would you object to the board being composed of one member of the Alaska Chiropractors Association, one member of the Alaska Chiropractors Society, and one lay member chosen by the Governor?
  - (2) Do you object to having the board composed of members who are from colleges fully accredited?

QUESTIONS YOU MAY ASK ME

1. What do you think would happen to your profession if the Alaska Chiropractors Association were to decide who could become board members?
2. What do you think would happen to your profession if the Alaska Chiropractic Society were to decide who could become board members?
3. Would you object to a lay member on the board?
4. Are there other states with more than one association?
5. What happens on those boards?
6. Do you feel that colleges should be fully accredited?
7. Are the two national accrediting associations doing what they set out to do?
8. Are the accrediting standards of each national organization equal?
9. Do you have any evidence showing Western States College is not fully accredited?
10. Do you have any information indicating that Dr. Hammond has ever felt that the Chiropractic board should accept the national accredited agency as the arbiter in the matter of college accreditation?
11. Have you recently received an appointment to serve as a coordinator of legislative affairs on the national level?
12. Would your work on a national level have to do with problems such as these we are talking about today?

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.



**Alaska State Federation of Fishermen's Associations**

Box 455  
Cordova, Ak 99574  
April 22, 1970

**Representative Joe McGill, Chairman  
Resources Committee  
Alaska State House of Representatives  
Juneau, Alaska**

**COPY**

Dear Joe,

We strongly urge the passage of CS-SB 536 am,  
prohibiting water pollution.

We feel this is a priority bill which seeks  
to prevent damage to our marine resources by pollution  
from oil tankers dumping dirty ballast.

Sincerely,

*Richard*  
Richard Janson,  
Acting Secretary

cc:  
Barry Jackson, Judiciary Chairman  
Mike Bradner, Sales Chairman

Mr. Jackson, Chairman, and Members of the House Judiciary Committee.

For the record, my name is Roscoe Bell, Land and Legislative Consultant for BP Alaska.

It is my great personal pleasure to speak to you today, and as a representative of British Petroleum Alaska to recommend for your favorable consideration House Committee Substitute for Senate Bill 536.

BP, along with a number of other major international oil companies, has for the past several years sponsored the Clean Seas Program which has been responsible for international agreements and for the substantial decrease in ballast dumping on the high seas and territorial waters. But we all know that much more must be done. Alaska is rightfully concerned about the problems now and in the future relating the dumping of oily ballast.

This legislation is a step with which we agree in principle, although we cannot state with certainty that it will not be challenged in court. We firmly believe that oil spills are a joint responsibility of the shipping industry and the government. As major world oil shippers, the majors included in the Clean Seas Program have accepted their responsibility by developing new handling techniques for completely eliminating the dumping of oily ballast

and by installing ballast cleaning facilities at major loading terminals.

However, there still remains the area 50 miles out at sea where ballast dumping is approved under international agreement. We do not believe that dumping of oily ballast should be legal anywhere on the seas, and most certainly not anywhere in the seas around Alaska.

Unfortunately, there are independent charter tankers which are not under the complete control of the shippers; although here, too, control is attempted through the terms of the long-term charter contracts as well as the spot charters.

We believe that international agreements should be strengthened. We commend the U.S. Government Water Quality Control Administration for their interest in eliminating, or reducing, the dumping of oily ballast, and we certainly commend the State of Alaska for considering this proposed legislation.

We have examined the legislation and find that it is consistent with the federal legislation. This is a point in its favor. As you all know, in connection with management and operation of tankers, one of the principal problems is having rules that are consistent, that are generally understood, and that do not vary from port to port, and that can be easily made part of the terms of the charters and can be understood by the captains and other personnel of the ships. Many of the problems that have been

experienced have been human errors or human carelessness. This bill is another step in trying to control this kind of action. By cooperation of the oil companies, the shipping industry, the officials responsible for administration of this law and the federal laws, we will be able to protect Alaska's marine environment and resources.

We also commend the Legislature for the Senate Joint Resolution 95 and hope that the State will press for the international conference between the U.S. and Canada to see if a special zone cannot be set up under international law surrounding these countries where the dumping of oily ballast is completely prohibited.

I thank you for your time and the opportunity to talk with you on this very important subject. By its passage, this bill will further demonstrate Alaska's concern with the environment.

SB-536

V

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JUNEAU ALASKA 1 1154A PDT

JARRED CARTER

ROOM 6420 STATE DEPT BLDG WASHDC

THE FOLLOWING IS A TEXT OF A BILL SENATE BILL 356 WHICH HAS PASSED OUR

STATE SENATE AND IS NOW BEING CONSIDERED BY THE HOUSE RESOURCES COMMITTEE. IT WOULD BE APPRECIATED IF YOU COULD REVIEW THE BILL FROM THE STANDPOINT OF FOREIGN RELATIONS AND WIRE ME ANY COMMENTS WHICH YOU FEEL

MAY BE OF ASSISTANCE IN OUR DELIBERATIONS. AN ACT PROHIBITING WATER POLLUTION SECTION 1 AS46.05 IS AMENDED BY ADDING A NEW SECTION TO READ SECTION

46.05.173 BALLAST WATER DISCHARGE SECTION A NO PERSON MAY POLLUTE OR ADD TO POLLUTION OF WATERS

OF THE STATE BY DISCHARGING FROM ANY VESSEL BALLAST WATER, TANK CLEANING WASTE WATER OR OTHER WASTE CONTAINING

OIL IN EXCESS OF 100 PARTS PER MILLION OF OILY RESIDUE, OR IN EXCESS OF A PERCENTAGE LEVEL TO BE ESTABLISHED BY

THE DEPARTMENT WHICH DOES NOT EXCEED 100 PARTS PER MILLION OF OILY RESIDUE. SECTION B EXCEPT AS PROVIDED IN C

X changed eliminated

OF THIS SECTION, VESSEL TAKING ON OIL, PETROLEUM PRODUCTS X ARRIVE

X changed

IN PORTS IN THE STATE WITHOUT HAVING DISCHARGED BALLAST AT SEA, AND THE MASTER OF THE VESSEL SHALL

CERTIFY THAT FACT ON FORMS TO BE PROVIDED BY THE DEPARTMENT SECTION C VESSELS EQUIPPED

WITH TANKS USED EXCLUSIVELY FOR BALLAST OR CAPABLE OF PRODUCING BALLAST WITH AN OILY CONTENT

LESS THAN THAT PROVIDED FOR IN SECTION A

MAY BE CERTIFIED BY THE DEPARTMENT TO DISCHARGE

X eliminated

THAT BALLAST AT SEA, INCLUDING THE WATERS  
OF THE STATE SECTION 2 AS46.05.210 IS AMENDED  
TO READ SECTION 4605.210 IS AMENDED TO READ SECTION  
46.05.210 PENALTIES SECTION A A PERSON WHO VIOLATES  
PROVISION OF THIS CHAPTER OR AN ORDER ISSUED UNDER THIS  
CHAPTER, OR WHO FALSELY CERTIFIES INFORMATION  
REQUIRED UNDER THIS CHAPTER IS GUILTY OF A  
MISDEMEANOR AND UPON CONVICTION IS PUNISHABLE BY FINE  
OF NOT LESS THAN 500 OR MORE THAN 25,000 AND IMPRISONMENT  
FOR NOT LESS THAN 30 DAYS NOR MORE THAN A YEAR EACH UNLAWFUL  
ACT CONSTITUTES A SEPARATE OFFENSE SECTION B IN  
ADDITION TO THE PENALTIES PROVIDED IN SECTION A. A PERSON  
WHO VIOLATES SECTIONS 172-173 OF THIS CHAPTER IS LIABLE  
IN A CIVIL ACTION FOR LIQUIDATED DAMAGES TO BE  
ASSESSED BY THE COURT FOR AMOUNT NOT LESS THAN  
5000 NOR MORE THAN 100,000 DEPENDING ON THE SEVERITY OF THE  
VIOLATION SECTION C IN ADDITION TO THE PENALTIES PROVIDED IN  
A AND B OF THIS SECTION, A PERSON WHO VIOLATES SECTIONS  
172-173 OF THIS CHAPTER IS LIABLE IN A CIVIL  
ACTION FOR DAMAGES IN THE AMOUNT NOT TO EXCEED \$100 PER  
GROSS TON OF THE VIOLATING VESSEL OR \$14,000,000, WHICH  
EVER IS LESS. (DAMAGES) AS USED IN REMOVAL  
OF A POLLUTANT AND REASONABLE RESTORATION OF THE  
ENVIRONMENT TO ITS FORMER STATE

REPRESENTATIVE JOE MCGILL CHAIRMAN HOUSE  
RESOURCES COMMITTEE POUCH V JUNEAU.

*changed*

*X changed*



DEPARTMENT OF STATE

Washington, D. C. 20520

SB-534

May 12, 1970

Mr. Joseph McGill  
Chairman, Natural Resources Committee  
House of Representatives  
Juneau, Alaska 99801

Dear Mr. Chairman:

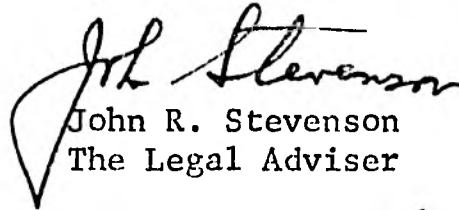
Mr. Jared Carter of my office has brought to my attention your telegram to him of May 2, 1970 asking the Department's views from the standpoint of foreign relations on legislation pending in your Committee. We have reviewed the draft bill and have the following comments:

Alaska's enactment of this legislation would create foreign relations difficulties for the United States by conditioning a ship's access to Alaskan ports upon that ship's adherence to standards in areas of the high seas beyond the jurisdiction of Alaska. The effect of the bill would be to impose conditions upon commercial maritime activities on the high seas. As explained in the attached press release, which was issued after the Canadian Government introduced into its Parliament bills on the limits of the territorial sea and fisheries and pollution control jurisdiction, the United States has long sought international solutions, rather than unilateral approaches, to problems involving the high seas. Specifically, we are seeking a new international means for controlling pollution on the high seas. Our efforts to obtain such international solutions would be greatly complicated if we ourselves attempt to solve these admittedly important problems on a unilateral basis. The problem is compounded by our federal system and the prospect of the several states imposing their own (possibly inconsistent) standards and regulations. For these reasons, the Department would be opposed to enactment of the bill set forth in your cable.

- 2 -

I hope these views are of assistance to you in your Committee's deliberations on this bill. If we can be of any further assistance, please let us know.

Sincerely yours,

  
John R. Stevenson  
The Legal Adviser

Attachment:

Press Release.

# DEPARTMENT OF STATE

APRIL 15, 1970

FOR THE PRESS

NO. 121

## CAUTION - FUTURE RELEASE

FOR RELEASE AT 1:00 P.M., E.S.T., WEDNESDAY, APRIL 15, 1970. NOT TO BE PREVIOUSLY PUBLISHED, QUOTED FROM, OR USED IN ANY WAY.

### DEPARTMENT OF STATE STATEMENT ON GOVERNMENT OF CANADA'S BILLS ON LIMITS OF THE TERRITORIAL SEA, FISHERIES AND POLLUTION

Last week the Canadian Government introduced in the House of Commons two bills dealing with pollution in the Arctic, fisheries and the limits of the territorial sea. The enactment and implementation of these measures would affect the exercise by the United States and other countries of the right to freedom of the seas in large areas of the high seas and would adversely affect our efforts to reach international agreement on the use of the seas.

The bills seek to establish pollution zones in Arctic waters up to 100 miles from every point of Canadian coastal territory above the 60th parallel. Within these zones, Canada would assert the right to control all shipping, to prescribe standards of vessel construction, navigation and operation, and to prohibit, if Canada deemed it necessary, the free passage of vessels in those waters. Additionally, the legislation seeks to authorize the establishment of exclusive Canadian fisheries in areas of the high seas beyond 12 miles, such as the Gulf of St. Lawrence and the Bay of Fundy, and of a 12-mile territorial sea off Canada's coasts.

International law provides no basis for these proposed unilateral extensions of jurisdictions on the high seas, and the United States can neither accept nor acquiesce in the assertion of such jurisdiction.

We are concerned that this action by Canada if not opposed by us, would be taken as precedent in other parts of the world for other unilateral infringements of the freedom of the seas. If Canada had the right to claim and exercise exclusive pollution and resources jurisdiction on the high seas, other countries could assert the right to exercise jurisdiction for other purposes, some reasonable and some not, but all equally invalid according to international law. Merchant shipping would be severely restricted, and naval mobility would be seriously jeopardized. The potential for serious international dispute and conflict is obvious.

The United States has long sought international solutions rather than national approaches to problems involving the high seas. We are working for appropriate action within the United Nations framework looking toward the conclusion of a new international treaty dealing with the limit of the territorial sea, freedom of transit through and over international straits and defining preferential fishing rights for coastal states on the high seas.

We are also seeking new international means for controlling pollution on the high seas. Last fall 47 countries, including the United States and Canada, participated in the preparation of two international conventions establishing the right of a coastal state to take certain limited anti-pollution measures against vessels on the high seas, and also imposing strict liability upon the owners of vessels responsible for pollution.

These

These conventions which the United States has recently signed were concluded under U.N. auspices at Brussels. Other international approaches to control of pollution are underway at NATO and the U.N. Moreover, the United States is acutely aware of the peculiar ecological nature of the Arctic region, and the potential dangers of oil pollution in that area. The Arctic is a region important to all nations in its unique environment, its increasing significance as a world trade route and as a source of natural resources. We believe the Arctic beyond national jurisdiction should be subject to internationally agreed rules protecting its assets, both living and non-living, and have noted with pleasure the Canadian Prime Minister's public statement that Canada would be prepared to enter into multilateral efforts to develop agreed rules of environmental protection. To this end, we intend shortly to ask other interested states to join in an international conference designed to establish rules for the Arctic beyond national jurisdiction by international agreement. We would be pleased if Canada were to join us in organizing such a conference.

We regret that the Canadian Government, while not excluding these cooperative international approaches to our mutual problems involving the oceans, now proposes to take unilateral action to assert its own jurisdiction and establish its own rules pending the conclusion of international agreements satisfactory to it. For the reasons indicated earlier the United States can not accept these unilateral jurisdictional assertions and we have urged the Canadian Government to defer making them effective while cooperating in efforts promptly to reach internationally agreed solutions.

If, however, the Canadian Government is unwilling to await international agreement, we have urged that in the interest of avoiding a continuing dispute and undermining our efforts to achieve international agreement, that we submit our differences regarding pollution and exclusive fisheries jurisdiction beyond 12 miles to the International Court of Justice, the forum where disputes of this nature should rightfully be settled. Canada's action last week excluded such disputes from its acceptance of the International Court's compulsory jurisdiction. However, such action only prevents Canada from being forced into the Court. It does not preclude Canada voluntarily joining with us in submitting these disputes to the Court or an appropriate chamber of the Court.

With respect to the 12 mile limit on the territorial sea, we have publicly indicated our willingness to accept such limit, but only as part of an agreed international treaty also providing for freedom of passage through and over international straits.

The history of U.S.-Canadian relations is unique in world affairs for its closeness and cooperation. We are confident that, in this spirit, our two countries will continue to resolve our differences amicably and with mutual understanding.

\* \* \*

THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

SB 538

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

May 19, 1970

Barry,

Your HCS for SB 538 (school lands) is attached. It incorporates the W&E amendment and Mr. Bell's amendment regarding equivalent values. In his amendment (the fourth sentence of the section), the second to last word could read "lower" instead of "higher". He also recommends deleting "privately owned lands" from the second sentence, because it allows for a negotiated sale instead of bidding, and it puts the administrator of the provision in a difficult spot. Since the committee didn't seem to reach an agreement on this point, I left the words in; they can easily be deleted.

A.  
rt

5/30/70

AMENDMENT

IN THE HOUSE

BY The Judiciary Committee

TO: HCSSB 538

Page 1, Line 24:

Insert new Section 2 to read:

This Act does not apply to land which, on the effective date of  
this Act, is being advertised or negotiated for sale, lease or other  
disposal. *has been or*



Alaska Court System

State of Alaska

ROBERT H. REYNOLDS  
ADMINISTRATIVE DIRECTOR  
Gerald A. Peterson  
ASSISTANT ADMINISTRATIVE DIRECTOR  
ERNEST Z. REHBOCK  
LEGAL ASSISTANT

OFFICE OF ADMINISTRATIVE DIRECTOR  
941 FOURTH AVENUE  
ANCHORAGE, ALASKA  
99501

File - this  
bill may  
come to us

April 16, 1970

The Honorable Terry Miller  
Chairman, Senate Judiciary Committee  
Alaska State Senate  
Pouch V, State Capitol  
Juneau, Alaska 99801

RE: Senate Bill 539

Dear Senator Miller:

We have reviewed the provisions of Senate Bill 539 and are somewhat at a loss to provide an accurate fiscal note for same. This is due, in part, to the rather indefinite requirement for marriage counseling, and further, to the fact that it would take more time than we have available to predict the number and cost of forms to be devised, printed and distributed to the Masters provided by the act.

As far as marriage counseling is concerned, to be available, we would have to have at least three more marriage counselors, one in Fairbanks, one in Juneau, and an additional marriage counselor in Anchorage. Each of these marriage counselors would require a secretary. Furthermore, to make their services available, the counselors would necessarily be required to ride circuit in the "Bush", and there is no way we can accurately anticipate the need for them to travel.

It is my own opinion, without regard to the ultimate merits of the bill, that the matter needs further study to determine its true costs and other ramifications.

The Honorable Terry Miller  
April 16, 1970  
Page Two

I enclose herewith a copy of a memorandum, evaluating this bill, which I directed to be prepared by my Legal Assistant, Dr. Ernest Rehbock. I share his conclusions for the most part.

Sincerely,



Robert H. Reynolds  
Administrative Director

RHR/grg

Encl

MEMORANDUM

April 3, 1970

TO: Robert H. Reynolds  
Administrative Director

FROM: EZR *ER*

SUBJECT: Some Comments on Senate Bill 539 to Provide for  
Alternate Procedure in Actions for Divorce

You directed my attention to a senate bill introduced March 17, 1970, and purportedly favorably voted upon by the Committee on Health, Welfare and Education. The popular name for this bill seems to be the "quickie divorce action."

Under this statute provisions in the Code of Civil Procedure relating to divorce would be amended by adding new sections.

It appears that a non-adversary action for divorce would be established under AS 09.55.231 of this bill. Residence and domicile requirements under existing law are to be maintained.

Under proposed AS 09.55.232 family court masters may be appointed to carry out these provisions. I did not discover any provisions which provide special expertise in this master and must read the bill to authorize the appointment of a standing master or of a district judge or of any magistrate of the court of Alaska to conduct divorce hearings under this statute. The superior court judge is, however, authorized to conduct these hearings if he so elects.

AS 09.55.233 provides for the services of a family court marriage counselor to the extent available for a voluntary meeting. I should add at the present time only one such counselor has been budgeted for the entire state of Alaska.

AS 09.55.234 would make the procedure applicable to a divorce over which the court has jurisdiction where custody of minor children has been settled by agreement, and property issues are limited to support and alimony questions and property is limited to such items as dwelling, trade business, personal effects and similar items.

Mr. Robert H. Reynolds  
April 3, 1970  
Page Two

The action as herein provided shall be commenced under 09.55.235 by filing a fee and by filing documents.

It seems to be of some importance to take note of the documents which must be filed:

1. Statement under oath by both spouses that there is incompatibility of temperament.
2. Statement by both spouses under oath containing the necessary personal data and description of property owned.
3. An agreement signed under oath by both spouses expressing the desire to terminate the marriage, expressing their wishes as to custody of children, as to alimony and as to property award.

AS 09.55.236 would regulate the scope of hearing. The hearing officer may be the family court master or the superior court judge where applicable. The hearing is concerned with the question of children custody and the fairness of the agreement as to custody and as to support money provisions, as well as property division.

AS 09.55.237 would authorize entry of decree based on findings of fact and conclusions of law unless certain appropriate objections are being made or the superior court determines the unfairness or inadequacy of the settlement.

The following comments seem appropriate:

The social policy upon which the bill is grounded is apparently that a marriage which no longer represents a meaningful social and personal relationship should be terminated if so desired by both spouses without unnecessary litigation.

It is undoubtedly correct that both under statute and court decisions Alaska is committed to incompatibility of temperament as a ground for divorce absolute regardless of the question of who is at fault for the destruction of a meaningful relationship. In jurisdictions where divorce on objective grounds is known, it has always been recognized that there must be a deep disruption of the marital relationship and that on trifle grounds the court would not grant divorce. See material listed in Gobron v. Gobron, 2 Alaska Law Journal, p. 5 (1964), which defines the conflict

Mr. Robert H. Reynolds  
April 3, 1970  
Page Three

in personalities as one so deep as to be irreconcilable and to render it impossible for the parties to continue a normal marital relationship with each other.

The nature of this definition would seem to indicate that a judicial determination of the existence of this ground for divorce is necessary.

It is the policy of the state of Alaska that in all civil actions of some significance parties should be represented by counsel. Special provisions were made for the creation of the Alaska Legal Services Corporation for the express purpose that indigents may not be deprived of the benefit of advice of counsel.

The use of masters is encouraged under the Alaska rules and while masters are widely used under appropriate court orders for family matters, the use of masters has always been thoughtfully limited to fields of special expertise and has never been conceived as a matter which can be handled by random disposition or by voluntary submission of litigants to such a master.

In Alaska as in most jurisdictions, the drafting of legal documents pertaining to division of property, alimony and child support is considered practice of law. Litigants would not be forbidden to draft these papers themselves but any advice they may have to obtain with regard to such a settlement is legal advice and must, therefore, be forthcoming from attorneys authorized to practice law in Alaska.

In the matter of child custody and property division advice of counsel is so much more important because child custody can readily involve difficult jurisdictional questions and questions of determination of domicile and property division questions may involve technicalities of the law of real and personal property which may entirely escape the attention of the spouses or of a layman social advisor. Most of the masters which would be available to the Alaska court system to hear the so-called quickie divorce proceedings and to approve the documents submitted to them are laymen in the field of law. It must be remembered that magistrates and district judges have no jurisdiction in property actions and in equity actions and, therefore, may entirely lack the expertise necessary to make recommendations in a legal matter which concerns both property law and equity.

Mr. Robert H. Reynolds  
April 3, 1970  
Page Four

The fact that the superior court judge may if he so deems appropriate hear the matter himself or reverse the recommendations seems small consolation. Realistic consideration of Alaska geographic distances and of the heavy calendar with which a limited number of superior court judges have to contend will be a formidable obstacle to a meaningful review of the merits of the application and the details of the settlement in many instances.

Although the statement as to voluntariness of the action is made under oath, many litigants may not be fully aware of the nature of the action and its effect upon their children and their property possessions. Without mandatory advice of counsel such divorce action may be brought improvidently and in a manner inconsistent with the cultural and ethnic aspirations and ways of the spouses or dispositions may be made which could result in unfairness as to one of the parties.

It is my conviction that in this form at least, the bill defeats rather than implements the social policies of the state which are:

- (1) Upon serious incompatibility, divorce be granted.
- (2) Advice of counsel shall be available.
- (3) Utmost care should be taken that provisions of alimony and property divisions are in the best interests of the spouses and their minor children.

With regard to the last mentioned items, we should bear in mind that the state has a particular interest in the welfare of children. The order for custody and the provisions for child support must be so designed that the best interests of the child are protected. Neither parent is entitled to child custody as of right. AS 09.55.205. The important viewpoint of paramount consideration of the welfare of the child has been judicially expressed in numerous decisions. Bass v. Bass, 437 P.2d 324 (Alaska 1968); Ransier v. Ransier, 414 P.2d 956 (Alaska 1966). To say the least, it is unclear under the bill how the somewhat cavalier manner of submitting a statement of the parents to a master (in most cases a magistrate) can be a sufficient basis for this critical determination. In order to comport with the interest of the state, the custody and alimony disposition should in all cases have the judicial attention of the superior court judge on the basis of all relevant facts. Under the proposed bill, collusion through carelessness or ignorance may frustrate the child's interests.

Mr. Robert H. Reynolds  
April 3, 1970  
Page Five

I failed to mention that the question of jurisdiction over (a) the spouses (b) the custody of the children possibly out of the state and (c) alimony and support obligations, are difficult ones in divorce actions which may have multi-state aspects. It seems awkward to assume that any magistrate should be able to render such a decision without any opportunity afforded to counsel to present his views to a learned judge.

EZR/ld

The Legislature of the State of Alaska  
FISCAL NOTE

COPIES: THE CHAIRMAN OF THE COMMITTEE MAKING THE REQUEST  
THE HOUSE FINANCE COMMITTEE STAFF  
THE SENATE FINANCE COMMITTEE STAFF  
THE DIVISION OF BUDGET & MANAGEMENT  
RETAIN A COPY FOR YOUR FILES

Subject Marriage Counselors SB 539  
 requested by Senate Judiciary Committee  
 referred to \_\_\_\_\_ date of request April 13, 1970  
 completion date requested \_\_\_\_\_ date received \_\_\_\_\_

| EXPENDITURE DETAIL                  | FY 70-71          | FY        | FY        |
|-------------------------------------|-------------------|-----------|-----------|
| 100 PERSONAL SERVICES               | \$ 83,583.        | \$        | \$        |
| 200 TRAVEL                          | 9,600.            |           |           |
| 300 CONTRACTUAL SERVICES            | 21,480.           |           |           |
| 400 COMMODITIES                     | 2,700.            |           |           |
| 500 EQUIPMENT                       | 11,383.           |           |           |
| 600 LAND AND STRUCTURES             |                   |           |           |
| 700 GRANTS, CLAIMS & SHARED REVENUE |                   |           |           |
|                                     | (Rounding)        | (46.)     |           |
| <b>TOTAL</b>                        | <b>\$ 128,700</b> | <b>\$</b> | <b>\$</b> |

| FUNDING DETAIL                     |          |    |    |
|------------------------------------|----------|----|----|
| FEDERAL RECEIPTS                   | \$       | \$ | \$ |
| SPECIAL FUNDS                      |          |    |    |
| UNRESTRICTED GENERAL FUND RECEIPTS | 128,700. |    |    |
| Man Months                         | 72       |    |    |
| Permanent Positions                | 6        |    |    |
| Temporary Positions                | 0        |    |    |

FISCAL ANALYSIS

See Fiscal Detail Attached

DATE April 16, 1970

SIGNATURE



NAME & TITLE Robert H. Reynolds, Administrative  
Alaska Court System

SUPPLEMENT TO FISCAL NOTE FOR SB 539

ANCHORAGE - MARRIAGE COUNSELOR - RANGE 21

|  | <u>TOTAL</u>     |
|--|------------------|
| 100 - Personal Services - Salary 16,680; Benefits 2,002  | \$18,682.        |
| 200 - Travel - Transportation 2,000; Per Diem 1,200  | 3,200.           |
| 300 - Contractual - Communications 500; Repairs and Services 100; Printing and Advertising (Special Forms) 2,000; Space Rental 1,650; Transportation of HIRE 1,500   | 5,750.           |
| 400 - Commodities - Legal and Office Supplies including copy machine supplies and expense  | 700.             |
| 500 - Equipment - Desk 264; Chair, swivel 130; Credenz. 225; Bookcase 150; Chairs, side (4) 418; Cabinet, 5-drawer, legal w/lock 154; Table, pedestal, 30" x 60" 154; Coatrack 50; Dictating, Transcribing Units 990 | <u>2,535.</u>    |
|  | <u>\$30,867.</u> |

SECRETARY I (Range 10)

|  |                  |
|--|------------------|
| 100 - Personal Services - Salary 7,572; Benefits 908   | \$ 8,480.        |
| 300 - Contractual - Space Rental 1,320   | 1,320.           |
| 400 - Commodities - Office Supplies  | 200.             |
| 500 - Equipment - Desk, typewriter 190; Chair, steno 45; Electric Typewriter 468; Chairs, side (2) 209; Cabinet, file, 4-drawer, legal w/lock, fireproof 330 | <u>1,242</u>     |
|  | <u>\$11,242.</u> |

|          |             |
|----------|-------------|
| TOTAL:   | \$42,109.   |
| Rounding | <u>(09)</u> |

|      |                 |
|------|-----------------|
| NET: | <u>\$42,100</u> |
|------|-----------------|

SUMMARY

|                         |                  |  |
|-------------------------|------------------|--|
| 100 - Personal Services | \$27,162.        |  |
| 200 - Travel            | 3,200.           |  |
| 300 - Contractual       | 7,070.           |  |
| 400 - Commodities       | 900.             |  |
| 500 - Equipment         | <u>3,777.</u>    |  |
|                         | \$42,109.        |  |
| Rounding:               | (09.)            |  |
| TOTAL:                  | <u>\$42,100.</u> |  |

SUPPLEMENT TO FISCAL NOTE FOR SB 539

FAIRBANKS - MARRIAGE COUNSELOR - RANGE 21

|   | <u>TOTAL</u>            |
|---|-------------------------|
| 100 - Personal Services - Salary 17,964; Benefits 2,156   | \$20,120.               |
| 200 - Travel - Transportation 2,000; Per Diem 1,200   | 3,200.                  |
| 300 - Contractual - Communications 500; Repairs and Services 100; Printing and Advertising (Special Forms) 2,000; Space Rental 1,950; Transportation of HIRE 1,500  | 6,050.                  |
| 400 - Commodities - Legal and Office Supplies including copy machine supplies and expense   | 700.                    |
| 500 - Equipment - Desk 264; Chair, swivel 137; Credenza 225; Bookcase 150; Chairs, side (4) 418; Cabinet, 5-drawer, legal w/lock 154; Table, pedestal 30" x 60" 154; Coatrack 50; Dictating, Transcribing Units 990 | <u>2,542.</u>           |
|   | <u><u>\$32,612.</u></u> |

SECRETARY I (Range 10)

|  |                         |
|--|-------------------------|
| 100 - Personal Services - Salary 8,160; Benefits 979   | \$ 9,139.               |
| 300 - Contractual - Space Rental 1,560   | 1,560.                  |
| 400 - Commodities - Office Supplies  | 200.                    |
| 500 - Equipment - Desk, typewriter 210; Chair, steno 45; Electric Typewriter 468; Chairs, side (2) 209; Cabinet, file, 4-drawer, legal w/lock, fireproof 350 | <u>1,282.</u>           |
|  | <u><u>\$12,181.</u></u> |

|           |                         |
|-----------|-------------------------|
| TOTAL:    | \$44,793.               |
| Rounding: | <u>7.</u>               |
| NET:      | <u><u>\$44,800.</u></u> |

SUMMARY

|                         |               |
|-------------------------|---------------|
| 100 - Personal Services | \$29,259.     |
| 200 - Travel            | 3,200.        |
| 300 - Contractual       | 7,610.        |
| 400 - Commodities       | 900.          |
| 500 - Equipment         | <u>3,824.</u> |
|                         | \$44,793.     |
| Rounding:               | <u>7.</u>     |
| TOTAL:                  | \$44,800.     |

SUPPLEMENT TO FISCAL NOTE FOR SB 539

JUNEAU - MARRIAGE COUNSELOR - RANGE 21

|  | <u>TOTAL</u>  |
|--|---------------|
| 100 - Personal Services - Salary 16,680; Benefits 2,002  | \$18,682.     |
| 200 - Travel - Transportation 2,000; Per Diem 1,200  | 3,200.        |
| 300 - Contractual - Communications 500; Repairs and Services 100; Printing and Advertising (Special Forms) 2,000; Space Rental 1,500; Transportation of HIRE 1,500   | 5,600.        |
| 400 - Commodities - Legal and Office Supplies including copy machine supplies and expense  | 700.          |
| 500 - Equipment - Desk 264; Chair, swivel 130; Credenza 225; Bookcase 150; Chairs, side (4) 418; Cabinet, file, 5-drawer, legal w/lock 154; Table, pedestal, 30" x 60" 154; Coatrack 50; Dictating, Transcribing Units 990 | <u>2,535.</u> |

\$30,717.

SECRETARY I (Range 10)

|   |               |
|---|---------------|
| 100 - Personal Services - Salary 7,572; Benefits 908  | \$ 8,480.     |
| 300 - Contractual - Space Rental 1,200  | 1,200.        |
| 400 - Commodities - Office Supplies   | 200.          |
| 500 - Equipment - Desk, typewriter 175; Chair, steno 45; Electric Typewriter 468; Chairs, side (2) 209; Cabinet, file, 4-drawer, legal, w/lock, fireproof 350 | <u>1,247.</u> |

\$11,127.

|           |              |
|-----------|--------------|
| TOTAL:    | \$41,844.    |
| Rounding: | <u>(44.)</u> |

NET: \$41,800.

SUMMARY

|                         |               |  |
|-------------------------|---------------|--|
| 100 - Personal Services | \$27,162.     |  |
| 200 - Travel            | 3,200.        |  |
| 300 - Contractual       | 6,800.        |  |
| 400 - Commodities       | 900.          |  |
| 500 - Equipment         | <u>3,782.</u> |  |
|                         | \$41,844.     |  |
| Rounding:               | <u>(44.)</u>  |  |
| TOTAL:                  | \$41,800.     |  |

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE

ALASKA TRANSPORTATION COMMISSION

58-543  
KEITH H. MILLER, GOVERNOR

750 MACKAY BUILDING  
338 DENALI STREET—ANCHORAGE 99501

May 9, 1970

The Honorable Barry Jackson, Chairman  
House Judiciary Committee  
State Capitol Building  
Juneau, Alaska 99801

Re: Senate Bill 543 am "An Act relating to the  
Alaska Transportation Commission...."  
which provides for removal of commissioners  
and the employment of hearing officers.

Dear Chairman Jackson:

The following comments are offered by the Alaska  
Transportation Commission to explain why such legislation is  
needed.

Sec. 1. Amendment to As 42.07.021(d) Removal of  
Commissioners

Although generally classified as an administrative body within  
the framework of the administrative branch of government, the  
Alaska Transportation Commission functions in fact, as an arm  
of all three branches of government. It interprets and admin-  
isters the statutes intended by the legislature to provide the  
tools for development of a dependable, adequate and sound trans-  
portation industry and network to serve the public needs. The  
legislature prescribes the enabling statutory tools. However,  
the commission itself must develop within that statutory frame-  
work the policy, expertise and judgment which will bring about  
the legislature's intended result. In this task the commission  
must look entirely to the guidance of the legislature as expressed

by statute rather than the guidance of the executive branch of the state government. Until the commission has developed a substantial body of expertise, procedure, precedence and law to fall back upon, the degree of success of the commission hinges primarily on its ability to do its job with the organization and funds provided by the legislature and the integrity, judgment, and knowledge of the appointed commissioners.

It must be recognized that the expertise essential to good regulation of the transportation industry is not acquired in a day no matter what the previous background of the commissioners may be. It is also true that optimum policies, procedures, regulations and laws are a matter of evolution and precedence.

As with the judiciary, it is necessary that a substantial degree of continuity of procedure, policy and decisions be established. Otherwise the transportation industry will be without guidelines and benefit of precedence. It is an essential ingredient of good regulation that the regulated industry and the public have confidence in the regulatory agency and some assurance of a steady direction of that agency.

All of this boils down to the factor that "commissioner" of the ATC should not be a position in which the appointee serves at the pleasure of the governor. We know of no federal or other state regulatory agency with similar regulatory responsibilities which is required to conduct its regulatory affairs and shape a transportation policy in the interest of the public under such a tenuous arrangement. The subject bill would

remedy this situation by providing for removal for cause.

The commissioners should be given this assurance that they will be able to initiate and carry out long range policies, procedures and programs which will be of benefit to the public and the industry. The challenge of the objectives is the only real inducement to this job of commissioner. Neither the work load nor the pay scale are such as to attract highly qualified people to this position; and if there is no reasonable prospect of an assurance of tenure there is little inducement for well qualified people to either take the job or to remain in it.

Sec. 2. Amendment to AS 42.07.101 Hearing Officers

The commission is a quasi judicial body. It must determine in the context of the public interest the relative rights and obligations of parties who come before it. Its hearings for this purpose are governed by and conducted in substantially the same manner as a civil proceeding in a court of law. A commission decision in a contested case is analogous to a court's judgment and is appealable to a court in the same manner as a judgment.

The overriding consideration of the commission is the public interest.

Commission proceedings differ from court civil proceedings in at least one very obvious and material way. The court proceeding is typically an adversary one. The parties present opposing cases to the court and the court then decides as between the parties, which one should receive the relief sought.

The typical proceeding before the commission, however, is essentially one of fact finding. Since it is the public interest that is of primary concern in most such proceedings.

the relative relationship of opposing parties is not the predominant issue. The overriding public interest consideration necessitates the development of an adequate record upon which the commission can base a reasoned decision. And where the parties have not developed an accurate or adequate record at a hearing it is essential that the commission (through the participation of its staff as a party in the hearing) help develop the facts.

Under the present organizational setup of this commission, the three commissioners have the duties of all of the administration of the agency including the investigation and enforcement activities from which many of its formal actions begin. Further, the commissioners must hear all of the cases, render all opinions and then issue the final orders of the commission. This, in substance, requires that they be enforcement agents, jury, prosecutor, and judge for every proceeding coming before the commission.

This coagulation of all functions of the commission under the direct day to day supervision of the commissioners effectively precludes the commissioners from adequately performing what is perhaps the most important responsibility assigned to them by the legislature. In the policy statements of the various transportation Acts the legislature outlines its objectives. AS 02.05.010, for example, provides:

"The purpose and policy of this chapter is to

- (1) recognize and preserve the inherent advantage of air commerce;
- (2) foster sound economic conditions in air commerce and among air carriers in the public interest;
- (3) promote adequate, economical and efficient service by air carriers, and reasonable charges therefor,

- without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices;
- (4) provide for the competition necessary to assure the sound development of an air transportation system properly adapted to and adequate to meet the needs of the commerce of this state;
  - (5) improve the relations between and coordinate transportation by and regulation of air carriers;
  - (6) provide for the administration and enforcement of this chapter to avoid conflict with the regulation of air carriers by the federal government;"

The legislature wisely recognizes these elements as essential ingredients to adequate, viable, healthy, integrated transportation networks capable of satisfactorily meeting the transportation needs of the state. Transportation is the state's most basic and vital industry.

But the legislature's objectives are not attainable by simple mechanical processes.

How to accomplish these objectives initially and in the future under rapidly changing conditions is the fundamental and most important responsibility the legislature has assigned to the Transportation Commission. Unfortunately, as matters now stand this Commission has little time available to meet this responsibility. Or if it takes the time, as it frequently must (See for example the attached Exhibits A, B and C relating to CAB and ATC air service investigations, jurisdiction, policies, procedures, etc.) then hearings, decisions and other such matters become further backlogged.

This is not to say the commissioners should not have the overall responsibility for the performance and functioning of the commission staff. It is simply that there should be a much

greater delegable capability, not only in the routine staff functions but in the hearing process itself. The ICC has delegated responsibility for the conduct of hearings to hearing officers since about 1906; the FTC since about 1914. Today, as Professor Kenneth Davis, one of the leading scholars on administrative law, points out, among all the federal administrative agencies, only in the Tax Court (which is an administrative agency) does the agency head actually hear and receive the evidence, conduct the hearings, personally study the record, and thereafter render his personal decisions. Says Davis:

"Theoretically this system (of the Tax Court) could be used for handling the business for all agencies now using examiners. Why not?

"The answer is that such a system would be grossly uneconomical. The evidence-taking process is slow and cumbersome. The job of presiding unually does not call for skills of top personnel. . . . The special skills and understanding of the agency heads should be reserved for issues of policy and overall supervision, and for troublesome problems of fact finding..... The tendency of nearly all adjudicating agencies (is) to move away from personal decisions toward institutional decisions (i.e. a decision made by an organization and not by an individual or solely by agency heads).....

"Able administrators in many agencies acting independently of one another, have experimented and have searched for the most effective means of deciding hosts of difficult cases, and they have almost uniformly concluded that deciding officers should have the assistance both of reviewing staffs and of agency specialists."

Davis, supra, §11.10 pp. 83, 84 and 87. Emphasis added.

It is physically impossible for the commissioners either collectively or acting individually to adequately direct the day to day operations of the staff, concurrently hold hearings and

render decisions on what are frequently very complex issues and questions of fact and law, keep abreast of the ever changing transportation needs of the state and shape the policy and procedures mandated by the legislature.

As a matter of fact it is impossible for the commissioners to conduct all hearings required by the statute and decide all such cases within a reasonable time. New applications for operating authority or transfer, etc., are now coming in at an average rate of about 20 to 25 per month. Most of these are required by law to be noticed and virtually all are protested. This is true even of applications for transfer of authority. This means that since early 1969 nearly all applications have had to go to hearing; and a rapidly increasing number of these hearings are lengthy and complex. Three hearings within the past 9 months each lasted for two weeks. The transcript for the most recent of these was over 2200 pages and nearly 100 Exhibits were received in evidence. (2200 pages of transcript require about 300 hours to transcribe and type.)

Where the formal hearing of a year ago averaged about 1 to 1 1/2 days in duration, the average now is from four to five days. This, coupled with at least a 50 percent increase in applications means that hearing time requirements have magnified approximately 500 percent since a little over one year ago.

Exhibit D shows a breakdown of present hearing workload. The number of hearings yet to be held would be substantially greater but for the fact that all applications have not been noticed yet or time for protest has not yet run. As shown in

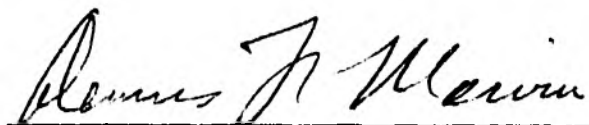
The Honorable Barry Jackson, Chairman  
House Judiciary Committee

May 9, 1970  
Page 8

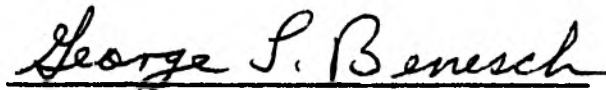
Exhibit C all applications for scheduled air carrier authority  
are being deferred for action pending further progress in the  
CAB ALASKA SERVICE INVESTIGATION.

The Commission wishes to thank you and your Committee  
for this opportunity to testify in behalf of SB 543.

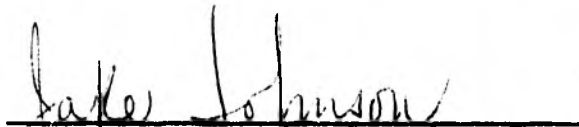
Sincerely,



Dennis L. Marvin, Commissioner



George L. Benesch, Commissioner



Jake Johnson, Commissioner

## HOUSE JOURNAL

## Judiciary Committee Report

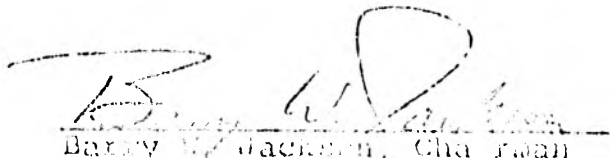
on

House CS for SENATE BILL NO. 543

This bill strengthens the Alaska Transportation Commission by (1) providing that commissioners may be removed only for cause, which is necessary to attract and retain professionally qualified persons; (2) allowing for the appointment of hearing officers in appropriate cases, which is necessary to cope with the overwhelming increase in caseload and complexity of cases, increases making it physically impossible under present law for the commissioners to keep up with current applications let alone reduce the backlog; and (3) clarifying the effect of an ATC permit for collection and disposal of garbage in an area which is annexed by a local government, which is necessary in order to avoid the inequity of a local government being able to drive a garbage hauler out of business by extending its boundaries to include all or part of the area served by him and then furnishing its own municipal garbage service under AS 29.10.156.

With regard to this third point, the committee believes that the local government should not be able to nullify, without compensation, a permit granted by the ATC and that a rate structure approved by the ATC should not be undermined by action of a local government in providing garbage service at a reduced rate. In basing fair market value on the economic loss to the permit holder, when the local government exercises the power of eminent domain to acquire the operating authority from the permit holder, the effect on the remaining portion of his business, if any, is to be considered.

It is the understanding of the committee that under changes in AS 42.10, enacted in Ch. 107 SLA 1970 (HCS CSSB 271 and H), garbage-hauling services are subject to regulation by the ATC.

  
Barry W. Jackson, Chairman  
House Judiciary Committee

BEFORE THE  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C.

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ALASKA SERVICE INVESTIGATION

DOCKET 20826

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PETITION BY ALASKA TRANSPORTATION COMMISSION  
FOR JOINT BOARD PROCEEDING

Communications with respect to this document should be sent to:

G. KENT EDWARDS  
ATTORNEY GENERAL  
By Shirle A. Debenham  
Assistant Attorney General  
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Commission  
338 Denali St., 750 Mackay Bldg.  
Anchorage, Alaska 99501

Anchorage, Alaska

April 28, 1970

BEFORE THE  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C.

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ALASKA SERVICE INVESTIGATION

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DOCKET 20826

PETITION BY ALASKA TRANSPORTATION COMMISSION  
FOR JOINT BOARD PROCEEDING

COMES NOW the ALASKA TRANSPORTATION COMMISSION (ATC) and petitions the Civil Aeronautics Board to implement the provisions of the Federal Aviation Act of 1958 (49 USC 1324) which authorize the C.A.B. to hold joint hearings and otherwise perform such acts, to issue such orders and to make such procedure as necessary to carry out the provisions of the Act relating to cooperation with State regulatory agencies; and in keeping with the objectives of such provisions, the ATC petitions the C.A.B. to reconstitute the Alaska Service Investigation as a Joint Board proceeding to be conducted and decided jointly by the C.A.B. and the ATC.

In support of its petition, the ATC respectfully states as follows:

I

The ATC is the duly constituted regulatory agency of the State of Alaska as provided by law (Chapter AS 42.07); and as such, is the agency responsible for the regulation of intrastate air commerce under the Alaska Air Commerce Act, Chapter AS 02.05.

II

The ATC is presently a party intervenor in the Alaska Service Investigation and as such is limited to participation on the evidence-producing level and to making recommendations to the C.A.B. without first having benefit of a complete record.

III

Approximately 95 percent of all scheduled intrastate air service in Alaska is provided by air carriers regulated exclusively by the C.A.B.; and between approximately 75 and 95 percent of all traffic moving between points in Alaska is intrastate rather than interstate movement and subject to regulation by the State.

IV

The ATC has conducted informal public hearings throughout Alaska in connection with the Alaska Service Investigation. It has done this as a

response to numerous requests of the public for such hearings and by virtue of the commendable understanding of the Board's Hearing Examiner in the Alaska Service Investigation who granted an extension of time to the Commission for this purpose. (All parties concurred in an extension of time substantially as requested by this Commission.) As a result of such hearings, and the Commission's additional investigations and familiarity with the intrastate air commerce needs of Alaska, the Commission has submitted, as a direct exhibit, a Position Paper directed primarily to the matters of CAB-ATC jurisdiction, regulatory objectives, and essentiality of substantially closer cooperation between the C.A.B. and this Commission. The summary of this Position Paper is attached to this petition and by reference made a part of this petition in support thereof.

V

It is essential that the jurisdictional questions be squarely faced and the utmost in cooperative effort be pursued by both the C.A.B and the ATC. This Commission currently has in its files a substantial number of applications for intrastate scheduled authority. The Commission has deferred consideration of all such applications (upon which hearings have not been held in the past six months) pending the outcome of this Alaska Service Investigation. Even where hearings had been held previous to this policy decision, the granting of authority where warranted by the public convenience and necessity has been limited to a one-year period.

It is presently intended by the Commission to systematically review the scheduled service requirements of limited geographical areas in a series of State regional service investigations and to provide for certificated service as needed in the many areas of the State.

If the C.A.B. and the ATC failed to integrate their efforts in these matters which so vitally affect the public interest, effective regulation would be very substantially frustrated.

The ATC recognizes that these matters and this petition should have been submitted to the C.A.B. at a much earlier stage in the Alaska Service Investigation proceeding (ideally at its inception or at least prior to the prehearing conference).

Unfortunately, this was not possible. The Commission was completely reorganized by repeal and reenactment of the Alaska Transportation Commission Act in May 1969 (Chapter 104, SLA 1969).

The policy developed herein is that of the new three-year Commission which Commission was not complete until January 1970. (Only one of the present three Commissioners was appointed to office prior to the prehearing conference in September 1969.)

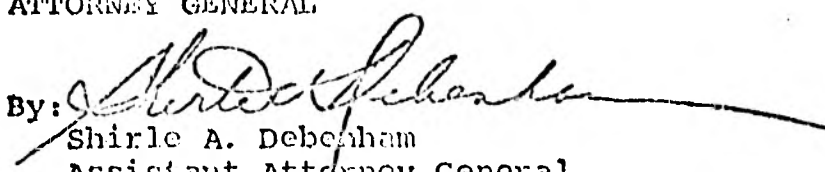
It is the Commission's belief, however, that the Alaska Service Investigation proceeding can still be restructured as a Joint Board proceeding even at this less timely stage particularly since no new issues will be added to delay the present proceeding schedule.

WHEREFORE, the Alaska Transportation Commission respectfully requests the Civil Aeronautics Board to reconsider the unilateral nature of the Alaska Service Investigation and to more appropriately in the overall interest of the public, reconstitute it as a Joint Board proceeding by the C.A.B. and the ATC.

Respectfully submitted,

G. KENT EDWARDS  
ATTORNEY GENERAL

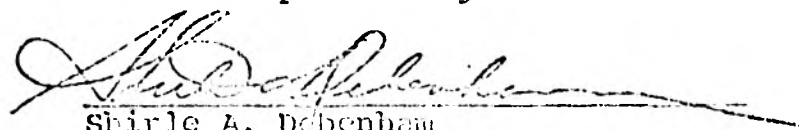
By:

  
Shirle A. Debenham  
Assistant Attorney General  
Attorney for Alaska Transportation  
Commission

April 28, 1970.

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of April 1970 mailed true and correct copies of the PETITION BY ALASKA TRANSPORTATION COMMISSION FOR JOINT BOARD PROCEEDING, properly addressed and postage prepaid to all parties of record in this proceeding.

  
Shirle A. Debenham  
Assistant Attorney General  
Attorney for Alaska Transportation  
Commission

IN THE MATTER OF:

THE ALASKA SERVICE INVESTIGATION

DOCKET 20826

POSITION PAPER

ALASKA TRANSPORTATION COMMISSION

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POSITION PAPER  
OF  
ALASKA TRANSPORTATION COMMISSION  
STATE OF ALASKA

The official position of the Alaska Transportation Commission (ATC) in this proceeding, the ALASKA SERVICE INVESTIGATION, can be summarized as follows:

1. That this investigation of primarily-intra-Alaska service should have been initiated by the Civil Aeronautics Board (CAB) as a joint board proceeding (as provided for in 49 USC 1324) thereby combining the regulatory efforts of both the CAB and this Commission in this matter. However, having failed to initiate it as a joint proceeding, the investigation should, nevertheless, be concluded in that vein with a joint decision.
2. That the Alaska Transportation Commission is a state regulatory agency with responsibilities on the state level similar to the responsibilities of the CAB on the federal level; that the limited role of "party" relegated to the Commission, notwithstanding its major function as a decision making body, is highly inappropriate in this proceeding; that this Commission cannot and should not develop recommendations as to specific route authorities, realignments, competitive service, subsidies, mail service, etc., without first having before it all evidence, briefs, etc., of all parties; that further, this Commission cannot and should not make any such specific recommendations without close coordination of its policies and conclusions with the policies and conclusions of the CAB; and that this review and close coordination can only be accomplished at the decisional level of this proceeding.
3. That the standards of performance and adequacy of service being provided by CAB certificated carriers in Alaska bear directly and forcibly upon the issues in this proceeding; that the importance of these questions pervades the entire spectrum of issues; and that fact-finding, public hearings as provided for

in CAB regulations [302.14 and 399.61(c)], are an essential ingredient of this proceeding if an informed decision on the issues is to evolve.

4. That the CAB is completely out of touch with the real operational conduct of its carriers in this State; that that conduct as measured in terms of service, effort, concern, public interest and operational integrity is deplorable; and that these conditions must weigh heavily in the CAB's determination of its future course of action in the exercise of its jurisdiction.

5. That the recent mergers and purchases of CAB-regulated carriers engaged in Alaska air transportation appear to have led to a substantial deterioration of intrastate service to virtually all communities and areas except those major cities where competition exists in fact.

6. That a formal and thorough investigation into matters of rate levels, rate discrimination, other discriminatory practices, accounting practices relating to separation of scheduled air transportation activities from other activities, efficiency, claims and refund practices and other matters of similar nature of Wien Consolidated Airlines and Alaska Airlines should be initiated by the CAB on its own motion as a logical outgrowth of this Service Investigation.

7. That approximately 95 percent of the scheduled intra-state air service in Alaska is being provided directly or indirectly by carriers certificated by the CAB over routes authorized thereto by the CAB and thus far regulated exclusively by the CAB. This situation has outlived its justification and has become a substantial burden on the public of Alaska.

8. That the exercise of regulatory authority by the State of Alaska should be substantially extended (preferably in cooperation with the CAB) over intrastate routes and over all carriers serving such routes. Over those routes where it remains essential or otherwise desirable for the CAB to exercise primary jurisdiction, the

machinery should be established for joint regulation by the CAB and the ATC, or in the alternative, regulation by the CAB upon consultation with the ATC.

9. That the practice whereby CAB-certificated carriers subcontract the scheduled performance of segments of their routes to local state-regulated carriers is not in the public interest. It is the position of this Commission that such subcontracts are unlawful and constitute a usurpation by the CAB carrier of the regulatory jurisdiction of this Commission.

10. That the contractual arrangements for the intrastate transportation of mail are outdated, inadequate and inappropriate. This matter needs a complete review toward the end of providing better service and adequate compensation to the carrier actually performing that service.

11. That matters relating to subsidy needs of, and payments to, carriers engaged in intrastate air service (including mail service) and the use to which such subsidies are put in competitive practices are of major concern to this Commission as well as to the CAB. A realistic and imaginative review should be made of the basis and need for subsidy and the qualifications for and the formulas under which subsidies should be paid.

12. That all carriers which serve Alaska and are regulated by the CAB, including those providing on-line interstate gateway service, should be required by the CAB to file concurrently with the ATC copies of all applications for routes, exemptions, tariff changes, transfers, and all other such documents which relate to Alaskan air commerce and which are filed with the CAB. It is essential that the State of Alaska be adequately and fully apprised of those matters affecting air commerce to and within the State.

13. That there is a serious need for closer cooperation and consultation between the CAB and the ATC. This Commission recognizes that the actions taken by each agency can, and frequently do, have a significant effect on those carriers regulated

by the counterpart agency. The expertise, long experience and competent staff of the CAB could be of great benefit to this Commission. Similarly, this Commission could materially assist the CAB with its need for local information, surveillance and general local contact.

## INTRODUCTORY NOTE

The foregoing summary delineates those matters upon which the Commission takes a position at this time. The body of this Position Paper elaborates on the points raised in the summary. It provides in greater specificity some of the more important reasons for stressing those points, and it develops in greater depth some rather compelling considerations involving jurisdiction and cooperation between the CAB and the ATC.

Submitted also are a number of exhibits in three separate series groups. The "100" series is composed of ATC requested or prepared exhibits presented primarily in an informational context. The "200" series contains published economic studies relating to the economy of individual communities or areas. The "300" series consists of statements, etc., pertaining primarily to sufficiency and standard of service.

So as not to unnecessarily burden this proceeding with repetitious evidence pertaining to sufficiency and standard of service, the Commission determined to present rather extensively the views of a single community as representative of prevailing views throughout the State. This approach presupposes, of course, that a substantial identity of view exists among people throughout the State as to compatibility of evidence. Indeed, after an extensive survey, the Commission found that such an identity or view does exist to a substantial degree.

The rather extensive written expressions received from the Bethel area (Exhibits ATC-300-312) are accordingly submitted as representative of views not only throughout the Wien Consolidated route system, but (to a slightly lesser degree) throughout Alaska Airlines' system as well. 1/

These expressions from Bethel form a major part of the ATC-300 series; the remainder of that series consists of a few typical written expressions from various other communities throughout the State. The Common elements in all these expressions will easily be noted.

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1/ Views of the people of Anchorage and Fairbanks and their immediate environs were not surveyed and have not been considered in arriving at these conclusions.

The official position of this Commission is expressed in this Paper and comparison of that position with the community expressions in the ATC-300 series will indicate substantial identity of view. In fact, this Paper will refer hereafter to some of those exhibits as supporting basis for various aspects of the Commission's position. The Commission does not necessarily concur in all of the community and individual views expressed in the ATC-200 and 300 series of exhibits.

THE ALASKA TRANSPORTATION COMMISSION, REGULATORY ARM OF THE STATE

The Alaska Transportation Commission was created as a separate and distinct State regulatory agency in 1966 (Chapter 139 SLA 1966, establishing Chapter AS 42.07). Prior to that time, the Alaska Air Commerce Act of 1960 was administered by the Alaska Public Service Commission. The ATC was substantially reorganized by Chapter 104 SLA 1969 in which a three-man Commission was provided in place of the previous two-man Commission.

The Commission is responsible for the administration and enforcement of the Alaska Air Commerce Act of 1960. As a general proposition, that Act provides for the regulation of air commerce within the State of Alaska in the public interest.

Three general classifications of air carrier are established by the State Air Commerce Act. They are the scheduled carrier, air taxi carrier, and the contract carrier. The Alaska law provides that for a carrier to engage in intrastate air commerce within the State, it must first be certificated by the Alaska Transportation Commission within one of these three general classifications.

In addition to certification, the Commission also regulates in varying degrees (depending upon the classification) the routes, rates, tariffs, safety of operations of aircraft, base of operations, etc., of intrastate air carriers.

The Commission also has the authority to grant exemptions to the certification requirements under specified conditions and for a limited period of time. In all cases, applications for new or revised authority must meet public convenience and necessity tests.

MORE THAN 75 PERCENT OF TOTAL PASSENGER TRAFFIC CARRIED BY CAB CARRIERS BETWEEN ALASKAN POINTS IS INTRASTATE -- THE SUBJECT OF STATE REGULATION

A review of the informational responses of Alaska Airlines and Wien Consolidated Airlines discloses that the vast majority of passengers carried between Alaskan points by CAB carriers is actually moving in intrastate commerce only.

Wien's Exhibit (WC-IR-201) containing O & D information for the month of October, 1969, shows that slightly over 90 percent of all of Wien's passenger load (including on-line and inter-line traffic) was intrastate only. And, if the number of interstate passengers who did not move intrastate beyond the points of entry into Alaska (other than between Juneau and Fairbanks) is subtracted, it can be seen that approximately 96 percent of the passenger movement over Wien's intrastate interior system was in no way involved in interstate commerce.

Similar information is not so easily developed for Alaska Airlines. However, a close examination of the Southeast Alaska network of Alaska Airlines reveals that at least as to that part of its system, the vast majority of the passenger movement between Southeast Alaska communities is strictly intrastate.

With some exceptions, Alaska Airlines did not disclose October, 1969, O & D information for most of its Southeast Alaska bush route system. However, from the information that was provided as well as other information available to this Commission including special O & D information requested by this Commission of Southeast Alaska air taxi subcontractors and other operators, it appears that over 90 percent of the scheduled inter-community passenger movement in Southeast Alaska in October, 1969, was intrastate.

Summer tourist traffic substantially increases the volume of interstate passengers moving between Alaskan points both in the Southeast Alaska system of Alaska Airlines and over the system of Wien Consolidated Airlines. The air tours offered by tour operators and the airlines bring a substantial influx of visitors to the State. The through-intrastate movement of these tourists, however, is generally limited to only the very few points covered in the tours.

It is also true that the summer movement of purely intrastate passengers increases very substantially. It can be seen, for example, in Exhibit ATC-105 that the Third Quarter Air Taxi passenger movement is more than twice that of the Second and Fourth Quarters, and more than three times that of the First Quarter. O & D information submitted by the carriers (to the extent that it can be so broken down) also indicates a much larger intrastate movement in the summer.

Thus the ratio of intrastate to interstate passenger traffic in the summer would probably be not less than 70 percent for the route systems discussed above.

ALL INTRA-ALASKA ROUTES REGULATED BY THE CAB REFLECT A MAJOR CAB-ATC JURISDICTIONAL OVERLAP

In most respects, the responsibilities and objectives of the Alaska Transportation Commission in intrastate air commerce matters are similar to those of the CAB in interstate air commerce matters.

Due to the long-standing and intimate involvement of the CAB in Alaska's air commerce, it would be impossible to draw a fine line between the jurisdiction of the CAB and the jurisdiction of this Commission. This ALASKA SERVICE INVESTIGATION itself epitomizes the jurisdictional overlap in integration of federal and state regulatory practices and policies.

Excluding the Seattle/Portland gateway services, virtually all point to point service and routes being considered in this proceeding are intrastate in nature. With respect to much of this service, interstate commerce is incidental or insignificant compared with intrastate service requirements. It is estimated that carriers regulated primarily by the CAB provide in excess of 95 percent of the scheduled intrastate air service within Alaska. This appears to be a most unusual situation, as well as one of questionable validity, if the CAB jurisdiction is exercised unilaterally.

It follows that in Alaska where air transportation is one of the most important transportation modes and a basic necessity to the entire economy of the State, it is essential that the State exercise major, if not primary, regulatory jurisdiction.

EXCLUSIVE CAB REGULATION OF SPECIFIC INTRASTATE AIR ROUTES AND CARRIERS HAS PROVEN TO BE NON-RESPONSIVE TO THE NEEDS OF LARGE SEGMENTS OF THE STATE

The matter of the exercise of so broad a jurisdiction by the CAB over intrastate routes is not in and of itself the major problem. What is unfortunate, however, is the unresponsiveness of this arrangement to the needs and complaints of the people who are presumably being served. It appears that the remoteness of the CAB from the area of operations of its regulated carriers substantially influences the objectives of the CAB in its regulatory policy as applied to intra-Alaskan services. This remoteness tends to insulate the CAB from operational and service matters (other than those which may be called to its attention by the carriers), the result being that the Board primarily concerns itself about only those problems, such as subsidy payments, which are its direct and exclusive responsibility. It appears that with respect to Alaskan carriers the overriding objective of the CAB is, and has for some time been, the elimination of subsidies with all possible dispatch.

There is little doubt that this primary objective is being achieved. However, it is also quite apparent to anyone familiar with Alaskan air transportation services that this primary objective is being achieved at great sacrifice in public service.

The CAB cannot be totally unaware of the vast deterioration in intra-Alaska air service over the past three or four years. But, it seems certain that the Board does not fully recognize or appreciate the magnitude and implications of these conditions.

THE DOMINANT OBJECTIVE IN THIS PROCEEDING -- REASONABLE ADEQUACY AND PERFORMANCE OF CARRIER SERVICE; THE APPROACH TO ACHIEVING THAT OBJECTIVE -- JOINT INVESTIGATION AND REGULATION

The instigation of the ALASKA SERVICE INVESTIGATION is unquestionably an important and commendable undertaking by the CAB. However, the issues which have been delineated by the Board reflect a continuing and virtually exclusive preoccupation with the subsidy issue and a most unfortunate lack of appreciation for the standards and adequacy of service.

It is the position of this Commission, however, that the adequacy and standards of service dominate as issues and the Board should and must consider them in this proceeding. Assuming the accuracy of this contention, it becomes at once apparent that

there are major deficiencies in the procedures adopted by the CAB in this Service Investigation.

We call the Board's attention to the provisions of the Federal Aviation Act of 1958 (49 USC 1324), titled Cooperation With State Aeronautical Agencies:

"(b) The Board is empowered to confer with or to hold joint hearings with any State aeronautical agency, or other State agency, in connection with any matter arising under this chapter within its jurisdiction, and to avail itself of the cooperation, services, records, and facilities of such State agencies as fully as may be practicable in the administration and the enforcement of this chapter."

We cannot conceive of a more appropriate occasion for the Board to have implemented the above quoted statute than the instant proceeding. The fact that it did not do so strongly suggests that the Board considered this Service Investigation to be little more than a fairly routine route proceeding. And, perhaps having little more to go on than the carriers' side of the story, the Board could justify that conclusion. However, even if it were routine, the fact that so great a proportion of the routes under investigation are primarily intrastate in nature, should have been sufficient for the Board to have proposed a joint board proceeding. It is elementary that the role of this Commission as simply a party in this proceeding effectively precludes participation by the State in the decisions affecting nearly all scheduled service in intrastate air commerce.

The Commission recognizes that the CAB has not specifically made an issue of the bush route services to those communities listed in Appendix C, but not shown in Appendices A and B, of CAB Order 69-3-68. Nor has the CAB determined to take up the issue of the relative jurisdiction of the CAB and this Commission. However, these issues are necessarily an integral part of this proceeding and, as previously stated, the issue of adequacy and standards of service over the bush route segments of the CAB carriers' authority is one of the dominant issues to be considered. It can be seen that these issues are inter-related. The exclusive regulatory jurisdiction heretofore exercised by the CAB over the Alaska routes has not resulted in reasonably satisfactory or adequate service to most of the communities in the State.

Additionally, the broad assumption of regulatory jurisdiction on an exclusive basis by the CAB seriously subverts effective local regulation. It encourages CAB regulated carriers to avoid state regulation and to look only to the CAB for route changes, tariff changes, etc. (See, for example, Exhibit ATC 104 ). The State seldom receives timely notice of such requests.

HEARING PROCEDURES ADOPTED BY THE CAB IN THIS INVESTIGATION  
PRECLUDE AN ADEQUATE EVIDENTIARY RECORD ON DOMINANT ISSUES ---  
ATC PUBLIC HEARINGS MAY PARTIALLY REMEDY THIS PROBLEM

In a proceeding such as this ALASKA SERVICE INVESTIGATION, where historical carrier performance is a matter of major significance, it is imperative that the consumer public be liberally afforded an opportunity to speak its piece.

Unfortunately, the restriction to a formal hearing process sans less formal public participation effectively thwarts this objective. It is well known that a good cross section of public opinion cannot be obtained in a matter of this sort without holding public, forum-type hearings.

To partially remedy the public participation problem, this Commission belatedly requested and was granted (with concurrence of all other parties) an extension of time in which to conduct open public hearings on its own and outside the CAB record.

During the latter part of February and early March, 1969, the ATC held open, public, forum-type hearings throughout the State and made numerous personal contacts with people throughout the State for the purpose of determining (1) the major concerns and views of the community in regard to air transportation and (2) the manner in which the people of this State may be better served in air commerce.

Hearings were held at the following places: Barrow, Kotzebue, Nome, Unalakleet, Andreafski (St. Mary's), Bethel, Dillingham, King Salmon, Kodiak, Kenai, Cordova, Valdez, Tok, Fort Yukon, Haines, Sitka, Juneau, Petersburg, Wrangell, and Ketchikan. Each of these hearings was conducted by one or more of the three Commissioners. The time, place and nature of these hearings was noticed in advance by public media and individual correspondence although notice was necessarily very short. There were in attendance from a handful to

forty or more people at each hearing. Anyone who desired to speak was permitted to do so. All testimony was recorded and most of these recordings were subsequently reviewed by the Commissioners. Portions thereof were transcribed for further, more detailed review.

People attending these hearings were encouraged to submit their views in writing and a fair representation did so.

Based upon these hearings, letters and numerous other contacts with people throughout the State, the Commission has determined that there are major and inexcusable deficiencies in the service provided by those CAB carriers serving intra-Alaska routes. This is poignantly clear in the so-called bush route areas. Such matters as extreme delays in mail and freight deliveries; inexcusable schedule delays or cancellations; inability to have claims and refunds settled within several months of filing; frequent and unannounced schedule changes; untrained personnel; discriminatory rates and improper charges; commonplace misinformation on flight arrivals and departures; frequent frustration in attempting to make interline connections; substantial failure to meet published departure and arrival times; inability of local people to obtain space on flights to and from tourist centers because all seats booked solid for several days at a time by tour passengers; the frequent unavailability of scheduled flights theoretically being performed by subcontractors, etc., were common complaints throughout the State. Most of these problems are presented in varying forms in Exhibit 300 series statements.

THE ALASKA TRANSPORTATION COMMISSION RECOMMENDS THAT THE ALASKA HEARINGS TO BE CONDUCTED BY THE CAB EXAMINER BE BROADENED IN SCOPE TO INCLUDE A PUBLIC EXPRESSION MISSION

It is the conviction of this Commission that the service conditions previously enumerated do predominate in most areas of the State. However, we do not presume complete agreement by the carriers involved.

Therefore, the ATC strongly urges that the forthcoming hearings to be held by the CAB in Alaska should likewise be of a nature that would allow general public participation and oral testimony.

CARRIER MERGERS AND CONSOLIDATIONS APPEAR TO HAVE LED TO MAJOR  
DETERIORATION OF INTRASTATE SERVICE THROUGHOUT THE STATE

Within the last three years there have been several mergers and purchases of CAB certificated carriers serving Alaska. In very brief summary, these mergers and consolidations were:

1. Wien Airlines and Northern Consolidated Airlines to form Wien Consolidated Airlines, Inc., April, 1968.
2. Western Airlines purchased Pacific Northern Airlines, July, 1967.
3. Alaska Airlines with Cordova Airlines, and with Alaska Coastal Ellis Airlines, surviving as Alaska Airlines, Inc., February and March, 1968.

There appears to be a direct correlation between the merger of the larger CAB carriers serving Alaska and the deterioration in air service to outlying communities and areas.

Western Airlines, for example, has been systematically ridding itself of what might be properly termed "local service obligations." It has suspended its service to King Salmon, Cordova, and Yakutat. It seeks to rid itself of its route between Anchorage, Kenai, Homer and Kodiak. In essence, it appears that Western's real objective in absorbing Pacific Northern Airlines was to acquire only the high-traffic-density, Seattle/Portland gateway routes to Alaska, and to succeed to the favored position of PNA in its application for Anchorage-Hawaii authority as consolidated in the Trans-Pacific Route Investigation.

Having accomplished these objectives, Western Airlines now shows no interest in the air service needs of the remainder of those communities previously served by PNA.

Alaska Airlines, in its two mergers, has gained access to the Anchorage-Juneau-Sitka-Seattle-Portland market. Ketchikan has not yet been added to this service route by the CAB, but the result of this omission has been the creation of some abnormal and unsatisfactory scheduling and service conditions in the Ketchikan, Juneau, Sitka feeder service from other Southeastern Alaska communities.

In essence, what the CAB has done in Southeast Alaska over the last five years is to substitute in substantial part Alaska Airlines and Wien Consolidated Airlines for Pan American World Airways in the interstate service to Southeast Alaska. This

substitution has never met the approval of the people of this area.

Alaska Airlines inherited by its merger a multiplicity of intra-Southeast Alaska routes. Many of the services previously provided by Alaska Coastal Ellis Airlines have been discontinued by Alaska Airlines entirely. A large number of the remaining point to point routes which Alaska purportedly continues to serve are in fact served by air taxi operators under subcontract with Alaska Airlines (Exhibit ATC-103).

It was anticipated that the merger of Wien Airlines and Northern Consolidated Airlines would provide a materially strengthened carrier which would result in a better service to the public than either carrier was capable of providing individually.

Unfortunately, the emerged carrier, while providing more sophisticated equipment and service to the large competitive markets, has retracted its service to the outlying communities. In markets where Wien Consolidated is not competing with another carrier, its service and performance have deteriorated markedly.

Between 1957 (the first year Northern Consolidated subcontracted out part of its route) and November 1, 1967, Northern Consolidated and Wien Alaska subcontracted a total of 34 points on their routes. Since May 1, 1969, Wien Consolidated has subcontracted thirty additional points (Exhibit ATC-103).

The inverse relationship between mergers and deteriorating service to outlying communities appears to be a very real one. Apparently when a carrier reaches substantial size, gains access to major markets, and places into operation sophisticated jet equipment, it loses its interest and perhaps capability to provide adequate service over marginal routes.

Unfortunately, the bush-level scheduled carriers, which develop from these circumstances, do not inherit any of the better traffic markets because those markets are already occupied by the large carriers.

CAB CARRIER SUBCONTRACTS ARE UNLAWFUL AND CONTRARY TO PUBLIC INTEREST

Wien and Alaska have submitted into the record copies of their agreements with air taxis under which the latter provide

local scheduled service. Exhibit ATC-103 graphically portrays the networks of such service routes. In each case, the subcontractor is a State-certificated air taxi operator. However, only two of the fifteen subcontractors are certificated by the State as scheduled carriers. And, even in those instances where the subcontractor is certificated to provide scheduled service, many of the points listed in his State route authority are different from those he serves under subcontract.

Further investigation also reveals that the subcontractor generally serves the contract points both as a scheduled carrier and as an air taxi operator. In many instances, the volume of traffic carried as an air taxi to such points substantially exceeds the volume carried as the subcontractor. It may be that in many such cases the traffic which the subcontractor is carrying under the contract is limited to multiple coupon, involving travel over more than one service leg.

Air taxi operators are required by State law to charge only those rates which they have filed with this Commission. It is immaterial whether the service is being provided on a trip by trip basis or under a long-term contract.

Thus, for such an operator to comply with the laws of the State of Alaska as to the charges which he may make, he cannot charge the rates and the tariffs of the CAB contracting carrier, unless such rates happen to coincide with those of the air taxi operator which are on file.

Under some of the contracts the operator is paid a flat hourly rate by the mainline carrier irrespective of the number of passengers, volume of freight, etc. The mainline carrier then collects its tariff rates from the sub's passengers and shippers.

Other subcontractors apparently collect and keep as their compensation the published CAB tariff rates of the mainline carrier.

The air taxi operator's tariff normally reflects hourly rates. The cost per passenger would depend on the number of passengers travelling between two given points on the same flight. Thus it would appear that there is only one point in the passenger-time relationship at which the air taxi rate per passenger could be the same as the passenger rate of the scheduled CAB carrier.

This subcontract approach is even further clandestine in that the CAB carrier, rather than this Commission, makes the determination as to which, if any, local Alaska certificated carriers will become scheduled carriers and will be allowed to carry mail for compensation. This leads to an unhealthy control by a major airline of the independent operations of locally-certificated carriers. It also leads to a reduction in competition and service through a mutual arrangement not to compete. Although the CAB regulated carrier remains ultimately responsible for the actions and performance of the subcontractor, they in fact exercise no supervision over the sub, do not know what the sub is doing or not doing, and apparently couldn't care less. With many of the subcontractors, the only scheduled service provided occurs on mail flights (if there is room) and mail is delivered sporadically.

One further point should be made before leaving the matter of subcontracts. There is no assurance that a contract will not be terminated on short notice; or that it will be renewed upon expiration; or that it will not be given to a different local operator; or that the CAB carrier itself will not terminate the contract and initiate the service itself. Thus, the State-certificated operator builds his operation and his capability with no assurance that he may continue to provide that service for any length of time.

The CAB carrier is neither qualified nor authorized to designate local carriers upon which it will bestow operating privileges within this State.

There have been numerous complaints to the effect that some subcontractors of CAB carriers are providing poor, sporadic, inadequate and unsatisfactory service to the people they supposedly serve. These conditions add emphasis to the impropriety of the route subcontracts.

IT APPEARS THAT THE AIR TAXI OPERATORS, PARTICULARLY IN SOUTHEAST ALASKA, NOW PROVIDE THE ONLY DEPENDABLE BUSH ROUTE SERVICE

The Commission has requested confidential O & D information of Southeast Alaska air taxi operators for the months of August and October, 1969. The response to this request was sufficient to indicate that the air taxi operators are now carrying a very

substantial percentage of the passenger traffic between communities presumably being served by Alaska Airlines.

The response to the Commission's request represents about one-third of the total volume of passenger movement by air taxi operators. The information submitted shows a weighted average of approximately 60 percent of the passenger load carried by the responding air taxi operators in the Third Quarter of 1969 as passengers moving between points on Alaska Airlines' scheduled route. It is believed that this average may be somewhat high as a reflection of the total Southeast Alaska air taxi movement. However, even if the percentage was reduced to 44 percent (the lowest of the reporting operators) it would mean that in the Third Quarter of 1969 air taxi operators in Southeast Alaska transported approximately 26,000 passengers between points listed on Alaska Airlines' scheduled route. This matter is well highlighted by the fact that Alaska Airlines in its informational response (IR-AS-1) shows the number of O & D coupon passengers carried by it between Juneau and Hoonah in the month of August, 1969, as 184. However, one air taxi operator alone shows a total of 840 passengers transported between Juneau and Hoonah during the same month.

It is the Commission's belief that these circumstances vividly reflect a virtually-complete abandonment by Alaska Airlines of its responsibilities under its CAB certificate to provide a dependable scheduled service to these outlying communities. In essence, the people of Southeast Alaska must look to the air taxi operator if they are going to receive a modicum of dependable service between the communities of Southeast Alaska.

The extent to which the results of the Commission's survey in Southeastern Alaska can be translated to other areas of the State is not known. However, the Commission has received considerable indication that the ratios may be similar in the Northwest, Southwest, and Interior areas as shown in Exhibit ATC 105.

UNILATERAL DECISION BY THE CAB WOULD BE IMPROPER IN THIS PROCEEDING

As procedural matters now stand, the decision in this Service Investigation is to be made unilaterally by the CAB.

This approach places the Alaska Transportation Commission in a rather unique position (since it is the regulatory body on

the State level). As pointed out earlier in the text of this Paper, the regulatory jurisdiction of the State is at least as substantial as that of the CAB.

Therefore, what the Commission is apparently being asked to do is decide for itself the issues in this proceeding without benefit of the evidentiary record and briefs and thereupon make its recommendations to the CAB as would any other party.

Such an approach, even if it were practical, would serve little purpose. It is essential that the jurisdictional questions be squarely faced and the utmost in cooperative effort be pursued by both the CAB and the ATC. This Commission currently has in its files a substantial number of applications for intrastate scheduled authority. The Commission has deferred consideration of all such applications (upon which hearings have not been held in the past six months) pending the outcome of this ALASKA SERVICE INVESTIGATION. Even where hearings had been held previous to this policy decision, the granting of authority where warranted by the public convenience and necessity has been limited to a one-year period.

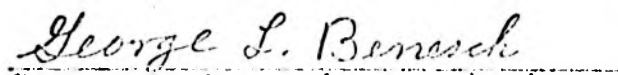
It is intended by the Commission to systematically review the scheduled service requirements of limited geographical areas in a series of State area service investigations and to provide for the certificated service so badly needed in many areas of the State.

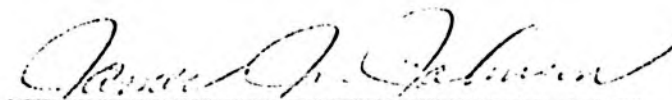
It would be a complete frustration of regulatory responsibility if the CAB and the ATC failed to integrate their efforts in these matters which so vitally affect the public interest.

DATED at ANCHORAGE, ALASKA, this 14th day of April 1970.

ALASKA TRANSPORTATION COMMISSION

  
Dennis L. Marvin, Commissioner

  
George L. Benesch, Commissioner

  
James J. Johnson, Commissioner

## STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

## DEPARTMENT OF COMMERCE

ALASKA TRANSPORTATION COMMISSION

750 MACKAY BUILDING  
339 DENALI STREET—ANCHORAGE 99501

May 5, 1970

This letter was  
sent to applicant  
air carriers represent-  
ing 13 docketed  
applications for intra-  
state scheduled carrier  
authority.

SUBJECT: Your Application for Scheduled Carrier Authority --  
Docket No. \_\_\_\_\_

Dear Mr.

The purpose of this letter is to inform you as to the status of your subject Docketed Application for Scheduled Air Carrier authority.

As you may already know the Commission is a party in the ALASKA SERVICE INVESTIGATION of the Civil Aeronautics Board, Docket No. 20826. Upon a close investigation, we believe that the issues in the CAB proceeding touch upon all existing or proposed scheduled service between all points within the State. We have, therefore, taken the position that neither the CAB nor this Commission should act wholly unilaterally in developing an adequate, efficient, feasible and statewide intrastate network of scheduled service.

In keeping with this policy the Commission has for the last several months deferred final consideration of all new applications for scheduled service not previously acted upon unless such deferral would create a serious public hardship in a particular case or the application may otherwise be non-controversial. We intend to continue this policy of deferral over the next few months, at least until the direction the ALASKA SERVICE INVESTIGATION is going to take has been demonstrated.

It is the contention of this Commission that much of the intrastate service such as that for which you have applied is and should be regulated by the State. At the same time, the Commission recognizes that a proliferation of numerous intrastate scheduled carriers could significantly affect the operations of the carriers heretofore regulated exclusively by the CAB. We believe the public interest demands that the regulatory efforts

May 5, 1970

of the Federal and State governments be substantially coordinated to avoid duplication of effort, conflicting decisions and objectives, adverse effects on the carriers and the public, etc.

This Commission has therefore placed itself in a posture whereby such coordination and joint effort can be accomplished. We are assuming, of course, that the CAB is similarly interested in such cooperation and coordination.

At such time as these applications for scheduled service are again considered (hopefully within the next few months) we propose to initiate local area service investigations for the purpose of developing an adequate, viable, feasible network of local carriers. This program will be preceded by a rule-making proceeding for the purpose of adopting guideline regulations and to give the industry and public an opportunity to be heard on the procedure, problems and objectives.

We appreciate your continued patience and understanding in this matter.

Sincerely yours,



George Benesch  
Commissioner

An examination by the staff of the Alaska Transportation Commission as of May 4, 1970, shows that the matters set forth below are pending before the Commission.

There follows hereinafter an analysis of these pending matters. The analysis attempts to group the matters so as to reflect the type of issues and problems involved. It further attempts to explain the general nature of each group and seeks to explain the responsibility of the Commission in deciding these matters so that reasonable time factors can be applied to the determination of each group of matters.

1. Contested Matters: This class of cases involves applications for permanent authority to operate air taxi, scheduled carrier, and contract carrier in air commerce; applications for temporary and emergency temporary authority for operation as an air taxi, scheduled carrier, and contract carrier in air commerce; applications for permanent and temporary authority for what are known as common carriers - freight, common carriers - passenger, and contract carrier - freight, in motor carrier commerce. Other classes of cases involve authority to operate air cushion vehicles and water carrier (ferry) vessels. Each of these cases has been protested by one or more individuals or companies and each application will require public hearing estimated to average from 4 to 5 days.

Contested cases requiring hearing

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2. Uncontested Matters: This class of cases involves matters in which there have been no formal protests but in which either an informal or formal hearing will be required by the Commission in order to determine whether it is in the public interest to authorize either air, surface, air cushion, or water (ferry) carriage. This class of cases also includes those matters in which formal oral argument is required by the Commission on either or both contested cases (which have been heard) or uncontested cases.

Hearings on uncontested cases or cases which require argument and Commission decision

66

3. Other Matters: This class of cases involves matters which require Commission study and perhaps additional hearings (not included above). These cases involve such matters as complaints alleging violations of the transportation law, requests for interpretations of the law, review of policy determinations made by prior Commissions, review of the operation and practices of operating carriers in which the public interest is involved.

Cases involving so-called Other Matters 13

4. Pending Decisions: This class of cases involves matters that have been heard by the Commission and cases which have not required a public hearing but which require the study, examination and exercise of judgment and discretion of the Commission. In all cases formally or informally heard by the Commission under the present law it is necessary for each Commissioner to fully study and analyze the record and all exhibits presented before entering into conference for decision.

Cases involving Pending Decisions 6

5. Special Matters:

(a) The Commission during the past several months has held over 20 hearings throughout the state in connection with the Civil Aeronautics Board's Alaska Service Investigation (Air Route Investigation). These hearings have averaged from 2 to 4 days per hearing (including travel time). Upcoming are six hearings within Alaska and at least two hearings in Washington, D.C. (Please see explanation of the nature and scope of these hearings, supra). These hearings are policy making in nature and hearing officers would not be able to attend to these matters nor exercise the discretion and judgment required.

|  |         |
|--|---------|
| Estimated time for CAB hearings          | 30 days |
| Estimated time for briefing and argument | 30 days |

(b) The transportation industry of Alaska has changed dramatically during the last few years. The industry is no longer a 'small-time' matter. Regulations of the Transportation Commission as they now exist were based on a much smaller and less complicated industry. The regulations have proven to be grossly inadequate and incomplete to meet the needs of our modern and growing industry. This fact is widely known throughout the industry particularly among attorneys practicing within this field. The regulations must be completely revised. Revision of regulations of the transportation industry is a vast and major task. There is no provision under the law for this task to be accomplished by other than the Commission itself. The revision necessary of regulations

governing air, motor carrier (freight and passenger), air cushion vehicles and water (ferry) carriers will require extensive research and study and may take as long as one year. This work must be performed by the Commission because these regulations involve many involved issues of policy, practice and procedure. Work on this revision of regulations which is very immediately necessary will require time that is now devoted to the hearing of cases.

Estimated time for revision of regulations 1 year

(c) In addition to revision of the transportation regulations there is an urgent need for a reclassification of carriers within each of the groups, i.e., air, surface, air cushion and water. The Commission now has planned at least three reclassification hearings. These hearings will involve the taking of testimony from all interested members of the industry, and the public.

Estimated time for reclassification hearings 30 days

The Legislature of the State of Alaska  
FISCAL NOTE

SB 569

→ House Judiciary

COPIES: THE CHAIRMAN OF THE COMMITTEE MAKING THE REQUEST  
THE HOUSE FINANCE COMMITTEE STAFF  
THE SENATE FINANCE COMMITTEE STAFF  
THE DIVISION OF BUDGET & MANAGEMENT  
RETAIN A COPY FOR YOUR FILES

Subject Judicial Salaries SB 569  
 requested by Senate Judiciary Committee  
 referred to Senator Miller date of request 4-20-70  
 completion date requested \_\_\_\_\_ date received \_\_\_\_\_

| EXPENDITURE DETAIL                  | FY 70-71           | FY        | FY        |
|-------------------------------------|--------------------|-----------|-----------|
| 100 PERSONAL SERVICES               | \$ 138,200.        | \$        | \$        |
| 200 TRAVEL                          |                    |           |           |
| 300 CONTRACTUAL SERVICES            |                    |           |           |
| 400 COMMODITIES                     |                    |           |           |
| 500 EQUIPMENT                       |                    |           |           |
| 600 LAND AND STRUCTURES             |                    |           |           |
| 700 GRANTS, CLAIMS & SHARED REVENUE |                    |           |           |
| <b>TOTAL</b>                        | <b>\$ 138,200.</b> | <b>\$</b> | <b>\$</b> |

| FUNDING DETAIL                     |          |    |    |
|------------------------------------|----------|----|----|
| FEDERAL RECEIPTS                   | \$       | \$ | \$ |
| SPECIAL FUNDS                      |          |    |    |
| UNRESTRICTED GENERAL FUND RECEIPTS | 138,200. |    |    |

Man Months  
 Permanent Positions  
 Temporary Positions -0-

FISCAL ANALYSIS

|  | SB 569   | Alaska Court System 70-71 Budget Req. | Increase | Total Increase   |
|--|----------|---------------------------------------|----------|------------------|
| Chief Justice  | \$32,000 | \$30,000                              | \$2,000  | \$ 2,000         |
| Associate Justices (4)   | 31,000   | 28,000                                | 3,000    | 12,000           |
| Superior Court Judges (16)<br>(11 present, 5 proposed)                                 |          |                                       |          |                  |
| Total of 17 includes the   |          |                                       |          |                  |
| Administrative Director  | 29,000   | 26,500                                | 2,500    | 42,500           |
| District Court Judges (16)   | 24,000   | 19,000                                | 5,000    | 80,000           |
|  |          |                                       |          | \$136,500        |
| Judges' Benefits--<br>W/C - 95¢; P.Liab. -<br>29¢/100<br>136,500 x \$1.24 = \$1,692.60 |          |                                       |          | 1,693            |
| - Total Salaries and Benefits:<br>Rounding:  |          |                                       |          | \$138,193<br>+ 7 |
| Net:   |          |                                       |          | \$138,200        |

DATE April 20, 1970

SIGNATURE

*Robert H. Reynolds*

NAME & TITLE Robert H. Reynolds, Administrative Director, Alaska Court System

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

*Boys received this yesterday*  
KEITH H. MILLER, GOVERNOR  
*Boys*

POUCH K, STATE CAPITOL — JUNEAU 99801

May 27, 1970

The Honorable Gene Guess  
Alaska State Representative  
Alaska State Legislature  
Juneau, Alaska

Re: Senate Bill 588

Dear Mr. Guess:

In accordance with your request we have reviewed Senate Bill 588 in order to determine its constitutionality. In the opinion of this office there is good reason to believe that SB 588 is inconsistent with one or more of the following sections of Article X of Alaska's Constitution:

Section 1. PURPOSE OF CONSTRUCTION.  
The purpose of this article is to provide for maximum local self government with a minimum of local government units, and to prevent duplication of tax levying jurisdiction.

Section 3. BOROUGHES. . . . The standards [for boroughs] shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interest to the maximum degree possible.

Section 7. CITIES. . . . shall be a part of the borough in which they are located.

Section 9. CHARTERS. . . . All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on a specific question.

The Honorable Gene Guess  
Alaska State Legislature

May 27, 1970

- 2 -

As noted above, Sec. 3 of Article IX requires establishment of boroughs according to standards which, while set by law, must include those of population, geography, economics, and transportation. From this requirement and others the Constitution obviously requires that the borough be established with a view towards cohesive functioning.

The idea of cohesiveness as the object desired is also reflected in the above quoted portions of Sec. 7 and Sec. 1 of Article X.

In this regard it is also important to note the following pertinent statements by members of Alaska's Constitutional Convention:

The powers of boroughs shall be provided by law, and we felt that in order to have good local government in Alaska, the whole state should be divided - we would not want to have loose sections here and there, and that in setting up this program the boundaries should be laid out. Alaska Constitutional Convention 2612.

We had thought that the boundaries should be flexible, of course, and should be set up so that we would not want too small a unit, because that is a problem that has been one of the great problems in the state, the very small units, and they get beyond, or they must be combined or extended. Id. at 2621.

It was pointed out here that these boroughs would embrace the economic and other factors as much as would be compatible with the borough, and it was the intent of the Committee that these boroughs would be as large as could possibly be made and embrace all of these things. Id. at 2638.

[W]e visualize the possibilities that as the borough becomes a more definite unit of government over the years, which we hope it will, the scope better defined, that all the functions

The Honorable Gene Guess  
Alaska State Legislature

May 27, 1970  
- 3 -

that can best be carried out on the unified basis be transferred over to the borough. Id. at 2654.

I would like to point out here that if that would be the case in our situation, where a city would grow to where its boundaries would be the same as the borough boundary, it would be a matter very simple to either disorganize the city or the borough so you would, under one government instead of having the situation that you would have in some cities in the states where they have grown to take over the whole county. Id. at 2657.

It should also be noted that the effect of Senate Bill 588 would be to make the area excluded from the unified municipality part of the unorganized borough since it would not be subject to any of the ordinances or other decisions of the governing body of the unified municipality. In other words, the result would appear to be a doughnut shaped borough, a concept which does not appear to be authorized by Sec. 7 of Article X.

Finally, there is the problem created by the provisions of Article X, Section 9, which provides

"The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. . . . All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question."

If one concludes that charter elections for unified local governments 1/ come within the meaning of the first

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1/ AS 29.85.120; AS 29.85.160.

The Honorable Gene Guess  
Alaska State Legislature

May 27, 1970

- 4 -

sentence of this constitutional section, 2/ the provisions of Senate Bill 588 would probably violate the section's last sentence in that one could reasonably conclude that the unification charter would be amended without submission to the qualified voters of the borough whenever a city were to exclude itself under authority of the bill's language.

Sincerely,



G. Kent Edwards  
Attorney General

GKE:jt

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2/ Although a borough and the cities within it need not be first class to unify under AS 29.85.010 whereas Alaska Const. Art. X, Sec. 9 speaks only of boroughs and cities of the first class, once unification has occurred, unified municipalities have all powers granted to first class cities. AS 29.85.210.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

May 2, 1970

MEMORANDUM

TO: Senator Lewis

FROM: Greg Machyowsky, Legislative Counsel

SUBJECT: Enclosed bills relating to exclusion  
of a home rule city from unified local  
government

Either of the two bills enclosed would permit a home rule city to withdraw from a unified government, notwithstanding that a majority of voters in the cities taken together have approved city and borough unification. The shorter bill is a duplicate of a draft prepared at the request of members of the House.

The other bill is for the same purpose, with some suggested revisions to spell out legal implications in more detail and more closely tailor the provisions to the Douglas situation; for example, the 60 per cent vote requirement of subsection (f) is raised to 70 per cent, which was the percentage by which Douglas voted against unification in the recent charter election in the Greater Juneau Borough. Also, subsection (i) alters the approach on filling the seat of a unified governing body member who is a resident of the city excluding itself from the unified government. (I have suggested that some technical revisions be made in the House draft if it is decided to introduce the bill.)

Exclusion of the city under either bill would have to take place before the city is dissolved under terms of the charter for unified government approved by the voters.

While possible arguments could be made on the constitutionality of the bills under the state constitution, in my judgment either bill would meet constitutional requirements.

GM/sm

*Greg Machyowsky*

Mr. Jackson, Chairman, and Members of the Judiciary Committee:

After hearing all the arguments pro and con on this issue I hope you will be able to sort out fact from fiction.

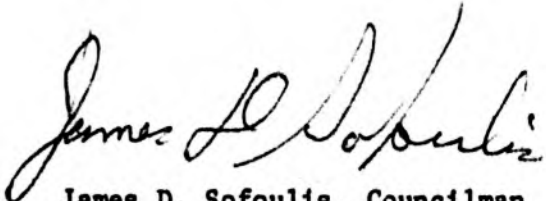
*the other day*  
Yesterday, Mr. McLean stated that the community of Douglas was not facing up to its responsibilities in area-wide functions. This is not so. We have participated in and are paying our full share in all area-wide functions - schools, hospital, assessing and collecting of taxes, administrative costs and all the rest that we are obligated to. To infer otherwise is doing an injustice to every taxpayer of Douglas. To assume we would not pay our obligations in the future is also an injustice. Our every intention is to participate fully with whatever functions are deemed area-wide.

All that is being sought here is a small measure of local government - to have a say in the day to day operation of the city, to maintain our streets and utilities (water and sewer) and have a place to be able to take our problems and be heard.

The farther we lean toward a totalitarian government, the less responsive it is to the needs of the people and the less participation people will take in their local affairs.

I urge favorable passage of Senate Bill 588 and this committee's favorable report to the full House of Representatives.

Thank you.



James D. Sofoulis, Councilman

City of Douglas

Mr. Chairman & Members:

*Sam G R Swank Douglas Res. since 1933 my wife since 1911*

I know too that this session is the longest in history. And I am sure you want to go home rather than have to sit here and listen to people making erroneous statements and tell you their personal record that they have practiced law and been in the Legislature, etc. The second witness, <sup>for the opposition</sup> another lawyer for the Borough asking that this bill #588 be kept in committee. He, too, is my lawyer, because Douglas is in the Borough. Why should he discriminate against Douglas, it's Douglas' tax dollar that helps pay his salary. He states the bill is unconstitutional, well, there are also lawyers in the Senate that didn't think so. Thirdly, another lawyer telling you that the charter was modified and all the teeth pulled out, it was modified all to the tune of putting Juneau in the middle of District 2 which is Douglas and also giving Juneau one more assemblyman. So one tooth was put back in. (Wisdom) And of course that's only his story. Douglas checked and found that the Dentist overlooked a few. We still have a few copies of what was overlooked. ~~Dropping back to Mr. McLeans testimony, saying that Douglas was not paying to support the airport. On his trip to Anchorage he made the statement there was another airport ready to go in on the Douglas side that would be in District 2 (Douglas) Who would get the profit after this airport is in operation.~~

The Douglas people are giving a lot of help to Juneau. Just a few years ago the Capital move was on the ballot and Douglas put one mill tax levy on all real property on a voluntary basis, everyone paid it. Douglas didn't want our sister city to fade away.

There has been talk of court action, this we want to avoid. It is too costly and we have had to listen to the same lawyer for advice. Here is a clipping out of the local paper. One other item that was mentioned was that Douglas had no housing plan. True, still when the Highway Department needed space in the spring of what year, Douglas gave up their ball park and had the Department moved in before the end of that year. With hard work and planning Douglas has

# Area Unification 7df 24-70 Douglas Residents Seeking Way Out

More than 100 Douglas residents appeared at a city council meeting Monday evening to learn what legal avenues they might pursue in opposing the unification of all governments in the Greater Juneau area.

"No action will be taken by the city council until after the absentee ballots are counted today and the unification election results are certified by the official canvass," Douglas Mayor Robert Savikko said today.

Douglas City Attorney Joe Henri said he told the group "I couldn't see any possibility for a successful court action."

Henri, who is also the city attorney for Juneau, said he told the council they would have to retain another lawyer to prosecute any legal efforts to overthrow last week's election approving unification.

The attorney said that in an-

swer to questions he told the gathering there are two avenues they can follow in seeking to secede from the unified government after July 1.

The city can proceed either under the annexation and exclusion laws of the state, or by an appeal to the Local Boundary Commission, asking to be excluded, he said.

Under state law, an area wishing to be excluded from a municipality follows procedures similar to those for annexation,

with a majority vote being required to bring about exclusion.

The courts apparently would have to resolve any conflict between laws allowing unification and those allowing exclusion.

Henri said he is also researching a question of possible "gerrymandering" of election districts on Douglas Island.

The question arose because West Juneau, which separates Douglas and North Douglas, is part of the city of Juneau.

## Absentee Ballots To Be Counted Today

Final outcome of last week's election on the revised charter for a unified municipal government will be known late today when the Greater Juneau Borough Assembly is expected to certify the ballot count.

The assembly is due to meet at noon today when it will instruct Borough Clerk Edward S. Hildebrand to count the absentee ballots.

Of 165 absentee ballots sent out for the election, approximately 65 went to voters in the

rural area, in which unification carried by the slim margin of 41 votes. In the combined Juneau-Douglas area, the vote was definitely in favor and would not be affected by absentee returns.

Hildebrand said he would begin the absentee count as soon as the assembly adjourned its noon session. The assembly is expected to reconvene at 5 p.m. to certify both last week's ballot returns at the polls and today's absentee ballot count.



page three.

Corrective other than secession  
with this sub-ult.

on the new unified government, or other action <sup>588</sup> allowing secession at this time.

In this event, I believe most objections would be over-come, <sup>with</sup> and the least people un-happy - and this area could go forward with-out inter-city bitterness and passions.

If the House passes <sup>declines of</sup> the bill, ~~in~~ some percent of approximately 400 voters of Douglas may be not entirely sati fied .

But the Community will have the knowledge that it fought the battle and in effect won the battle. The Legislature will have solved a problem. Juneau and area <sup>with</sup> / ~~and~~ Unification can continue, on-

ward in the march of progress, hopefully to the betterment of our citizens.

Sincerely,



Val Poor

Douglas, Ala ska

548

May 30, 1970

Alaska State Legislature  
House of Representatives  
Judicial Committee

I am Val Poor, a resident of Douglas, ~~for over 30 years.~~ I ~~have raised a family~~  
of five, ~~two of whom are sitting with me today,~~ <sup>who share my views in this</sup> ~~all graduates of the Unified~~  
~~School system,~~ <sup>matter today</sup> ~~and most planning to make this their home.~~ I am the Postmaster  
at Douglas and vitally interested in the affairs of the community, and intend to  
live in this community for my lifetime, My entire investment for the future  
lies in this community, as a extensive property owner.

I am here today to testify against action by the House of Representatives to  
pass legislation similar to a bill passed by the Alaska Senate, allowing  
Douglas to secede from the Unified government of the City and Borough  
of Juneau.

I am against the possible action because I can foresee more problems being  
made for our area and for a longer period of time, than if such legislation were  
not passed.

Douglas was wronged in two instances. The Legislature passed a bill  
several years ago which resulted in the City of Douglas having been dis-  
criminated against, and in which they could vote 100 % against unification  
and still have it forced upon them. Later the Charter Commission did  
not give Douglas a full 1 seat on the new representative unified government.

I firmly believe/ it is these two wrongs which are the direct ~~result~~ <sup>cause/</sup> of the defeat  
of <sup>the</sup> ~~a~~ unification <sup>Charter</sup> at Douglas proper, and why the Legislature is being asked  
now to correct the situation by further legislation. In my own case I  
felt very strongly and financially supported and voted against acceptance  
of the first Charter presented, partly on the basis of corrections needed,  
but mainly because of my ~~honest~~ anger at being dis-enfranchised by my vote  
in the event Juneaus vote overwhelmed us. <sup>By</sup> the presentation of the  
second Charter to the voters, ~~some~~ corrections were made, Douglas was given  
the chance during Charter hearings to be heard on other desirable changes.

I had taken another look at the area-wide picture and the advantages, and had analysed my own feelings, ~~and~~ concluding that I ~~was~~ mainly objecting to the principles of the election - more so at least, than the principles of unification. <sup>So</sup> I voted for Unification and the Charter, ~~on the second time around.~~

In Douglas several years ago we elected to consolidate our School systems into the Juneau Douglas School system. It was a bitter battle and ~~disruptive~~ disruptive to the ~~the~~ community for quite a few years. I was against unification of our schools. With the passing of years, the graduation of my children and the serving of five years on the School Board, I realize that, altho bitter at the time, the unified School system turned out to be the best for our children. It is a closed <sup>now</sup> issue and Douglas would'nt think of turning back, I'm sure. I believe that the injustices I mentioned can be remedied, under the existing system, with the help of this judicial committee.

The proponents of a bill to permit secession are my friends and neighbors ~~and patrons.~~ <sup>My</sup> ~~My sympathy goes with them and my heart is entirely with them in this matter of injustice.~~ They have worked hard and deligently and ~~with passion.~~ <sup>At this point</sup> ~~as~~ I believe <sup>it</sup> they have won. <sup>5/8</sup> The measure has passed the senate. I feel that the House too will feel obligated to <sup>correct</sup> correct these injustices towards a proud independent and very old Alaskan community. How-ever I also feel that the House of Representatives could, or this Judiciary Committee, could, take action other than passage of secession legislation, to correct the wrongs, ~~and still enable~~ ~~our area to continue on with Unification, the progress of the Community, the building of a greater Capital of Alaska, the building of swimming pools and other community benefits for the benefit of all.~~ The proponents will have won and proved that through due legislative action, wrongs can be righted. The Legislature will have played a important part in justice to citizens and state and community. And we <sup>can</sup> will still have unification of this area.

I propose that this Judicial body, or other body of the Legislature, direct the new City and Borough of Juneau, that a first order of business on July 1, be to ammend their charter, enabling Douglas to have 1 full Representative, guarantee d

Mr. Chairman, Mrs. Banfield and Gentlemen:

I believe we've met twice before on other legislation, but for the record, I am Julie Isaac, 410 "D" Street, Douglas, where I've been a resident with my husband and two teen-age youngsters for the past 19 years.

In appearing before you today on SB 588, I speak to you ~~today~~ as a resident and concerned citizen about the honesty and integrity of what we call the "democratic process." It has been only during ~~the~~ the past year that I've been able to participate actively in our City Government---from the sidelines under the portion headed "audience participation"--having failed to win a council seat in the last election. And I dare say since last October, I've had a better attendance record than many of our councilmen! (Now with this disclosure, Mayor McLean will probably be having some second thoughts about unified government, or maybe he will recommend doing away with audience participation altogether.)

When I heard the Juneau Mayor, <sup>yesterday</sup> attacking SB 588, the far-reaching effect it would have on <sup>the</sup> entire area, particularly what he said was misuse of the word "unification" rather than ratification, and the inference that we would be excluding ourselves from certain types of area-~~wide~~ wide services, such as the hospital and airport, I think he was going a bit too far. Douglas has always paid its way and will continue to ~~do so~~. Further, ~~the~~ <sup>mis-</sup> he interpreted the number of votes he received in Douglas as an endorsement of unification---and the same true out the road in the high vote for Jenny Kline. What did he expect us to do, support the Douglas candidate who ran against him! \*\*Insert

Yesterday's hearing was the first I've attended in regard to this bill, <sup>but</sup> ~~and~~ I understand the ~~same~~ charge has been made that Douglas is merely a bedroom city and offers little or no co-operation with Juneau or the entire area. To generalize in this manner, I feel is ~~entirely~~ <sup>completely erroneous.</sup> I think there is excellent co-operation between Juneau and Douglas, and Douglas has contributed more than its share of leadership capability in many undertakings that have benefitted the entire area....



State Affairs (Engstrom), I was told by Senator Thomas that he was very cool toward the bill after having talked to Dr. Wood, and he doubted that his committee would be able to get together before adjournment.

When I suggested maybe there was conflict of interest on his part (he has made some pictures for the University) told him I thought he should go ahead and make the effort anyway, he appeared to become irritated and said: "Mrs. Isaac, I am very sorry for you and have nothing but sympathy for you, but you have been deceived by your friends in the House----they knew at the time of passage of this bill it would never get through the Senate at this late date. They just wanted to get it off their back." When I continued to press for calling his committee and offered to help get them together, he finally told me that they would hear my testimony Tuesday morning---five days after receiving the bill.----probably after adjournment. *(add: now ret for tomorrow.)*

Now if the Senator thinks I have been deceived by the House, I wonder if the same charge might not be made against the Senate for having passed this bill out at so late a date.

All of us know there has been deceit---it first started when we were asked to elect a charter commission---oh no, we were not voting for unification---we were merely electing a charter commission to conduct a study. Two years, we are told, when we were voting to accept or reject the charter---you are voting to ratify the charter---you voted for unification at the time you elected the charter commission!

Millie, and gentlemen, I beg of you---there has been enough deception already do not deceive us further---if you are not meeting with us in good faith, with an open mind and a willingness to help right a wrong, then pray tell us and let us be about our business.

If there are portions of the bill that are unworkable or detrimental to the government outside of Douglas, please amend it---you have three attorneys on this committee, plus Mr. Peterson and the Attorney General---fix it--make it acceptable to both of us. *But* I ask you once more to please honor our vote and renew our faith in the democratic process. Thank you

Mr. Chairman and Members of the Judiciary Committee:

My name is Bill Boehl. I'm a former councilman and Mayor of Douglas.

We have heard arguments for and against unification, but we have heard very little about the unification law itself. It has not been tested in the courts of Alaska, nor have I heard of an Attorney General's formal opinion, attesting to the constitutionality of the original act. If there is one, it has never been tested in court.

This, in itself, poses grave legal problems ahead. I do not know if any action will be taken through the courts at the present time, but this does not preclude some other area or individuals of the State similarly involved in the future from attempting to resolve this question. If it were held unconstitutional a year or so after unification took place, this would pose serious problems indeed.

It seems to me there should be an attempt to get a ruling on the question from our Supreme Court before allowing what, in my opinion, is an illegal annexation. Courts have traditionally held that proper methods of annexation are valid, and this method was open to the area prior to the passage of the Unification Act.

We are a new State and new in government, but in the older 48 states there has been no great rush to dissolve smaller cities by the overwhelming vote of a larger city unless there was mutual agreement and proper annexation.

I would urge you to give SENATE BILL 588 a DO PASS and report it to the House for action.

517 Copper Street  
U. of A. Campus  
College, Alaska 99701  
May 5, 1970

CB 589

Barry Jackson  
Alaska House of Representatives  
Juneau, Alaska

Dear Mr. Jackson:

Governor Miller's scheme for using State funds to build the TAPS road can best be described as "Socialism for the rich." The Governor would never consider allocating so much money to loans for sewer, water, housing or education for low or middle income people.

Politicians frequently brush aside projects aimed at helping non-rich people or minority groups by saying "This is the responsibility of private enterprise". When a wealthy private enterprise gets in a jam, however, the Governor can hardly wait to bail it out with State money.

In actual fact, very few Alaskans will truly benefit from rapid construction of the TAPS road, and we all may suffer terrifically from it (for example, if the pipeline permit is not granted, or if the access road is not built along the pipeline's eventual route.)

The State's responsibility is to its citizens -- ALL of us, not just the oil and construction men. I say, let private enterprise build its own blankety-blank road!

It is up to Legislators of true stature to resist pressure from powerful oil and construction interests in favor of the long-range interests of all Alaskan citizens.

Sincerely,

  
Constance K. Smith