No. 3

SEVENTH LEGISLATURE - FIRST SESSION

Proposed Substitute for HB 276

For an Act entitled: "An Act relating to state aid for hospitals, health facilities and health services; and providing for an effective date."

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

*Section 1. AS 43.18.010(h) is amended to read:

(h) During each fiscal year the state shall pay to an organized borough or a city outside an organized borough, in which a health facility is operated, a sum equal to $1,500 ($1,000) for each bed licensed by the State Dept. of Health and Welfare (actually used)for patient care within the facility, (limited to the maximum number of beds provided for in the construction design of the facility) or $4,000 for a facility, if the local government elects to accept payment on that basis for a particular facility. In addition, if construction of a facility was begun by a local government or non-profit facility after January 1, 1968 the state shall pay to the local government during each fiscal year a sum equal to $5,000 per bed for the maximum number of beds provided for in the construction design of the facility, until the local government has received from this aid an amount equal to 25 per cent of the total project cost. Sums received by a local government under this subsection shall be used for expenses of operation, maintenance or health services or facilities, as the health facility determines. (local government determines)

*Sec. 2. AS 43.18.010 (i) is amended to read:

(i) In (h) of this section "health facility" or "facility" includes hospitals, public health centers, community mental health centers, facilities for the mentally or physically handicapped, nursing homes and convalescent centers which are determined by the commissioner of health and welfare to satisfy minimum standards of safe and adequate patient care LICENSED BY THE STATE UNDER AS 18.20.010 - 18.20.130 and are owned or operated or both by a local government or by a nonprofit corporation or other nonprofit sponsor; the term excludes facilities operated or wholly supported by the state or the federal government.

*Sec. 3. This Act takes effect July 1, 1971.

HOUSE JUDICIARY COMMITTEE HEARING

ON

HOUSE BILL # 308
HOUSE BILL # 289
SENATE BILL # 152

- - - - - - - - - - - - - - -

COURTS OF RECORD -

Those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony, and which have power to fine or imprison for contempt. It is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it.

COURTS NOT OF RECORD -

Those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. Black's Law Dictionary, Page 425 - 6.

AS 22.10.050 -

By statute, the Superior Court is made a court of record.

AS 22.10.020 (a) -

Requires the Superior Court to hear appeals from the District Court "on the record."

MAGISTRATE'S RULES OF CRIMINAL PROCEDURE - 1 (i) and Magistrate's Rules of Civil Procedure. (2) Requires that proceedings before the District Court shall be electronically recorded.

WHETHER OR NOT DISTRICT COURT IS COURT OF RECORD APPEARS TO BE MOOT INASMUCH AS ABOVE REFERENCED BILLS AFFECT THE QUESTION IN NO WAY.

AS 22.05.160 -

Authorizes the Supreme Court to appoint District Judges to act as recorders. In point of fact, District Courts and Magistrates Courts are recorders in this State.

AS 09.30.010 -

Provides that upon recording a judgment of a "court of this State" with the recorder, it becomes a lien upon real property in the recording district.

AS 09.45.790 -

Provides for the filing of lis pendens with the recorder and does not distinguish between Superior and District Court actions.

AS 09.40.050 -

Provides for recordation in the case of attachment of realty without distinguishing between District and Superior Court.

AS 35.35.005 - ET SEQ

Provides for liens and lien foreclosures. In each case, the claim of lien, regardless of the Court in which it would be enforced would have to be recorded in the District recording office.

RECORDING OF LIENS - $3.00 FOR FIRST PAGE, $2.00 FOR EACH ADDITIONAL PAGE.

OBSERVATIONS -

(1) Increasing jurisdiction for District Courts will have no effect regarding its status as a court of record.

(2) A recorded judgment is for the protection of the prevailing party in a lawsuit. He couldn't care less what court gave him his judgment. He is only concerned with establishing his lien right.

4/5/71

Bruce Monroe

re HB289

COURSE OF THE VOYAGE. By this term is understood the regular and customary track, if such there be, which a ship takes in going from one port to another, and the shortest way. Marsh. Ins. 185; Phill. Ins. 981.

COURSE OF TRADE. What is customarily or ordinarily done in the management of trade or business.

COURSE OF VEIN. In mining, the "course of the vein" appearing on the surface is the course of its apex, which is generally inclined and undulated and departs more or less materially from the strike. Stewart Mining Co. v. Bourne, C.C.A. Idaho, 218 F. 327, 329.

COURSE OF VESSEL. In navigation, the "course" of a vessel is her apparent course, and not her heading at any given moment. The Eastern Glade, C.C.A.N.Y., 101 F.2d 4, 6. It is her actual course. Liverpool, Brazil & River Plate Steam Nav. Co. v. U. S., D.C.N.Y., 12 F.2d 128, 129.

COURT. A space which is uncovered, but which may be partly or wholly inclosed by buildings or walls. Smith v. Martin, 95 Okl. 271, 219 P. 312, 313. When used in connection with a street, indicates a short street, blind alley, or open space for a short street inclosed by dwellings or other buildings facing thereon. City of Miami v. Saunders, 151 Fla. 699, 10 So.2d 326, 329.

Legislation

A legislative assembly. Parliament is called in the old books a court of the king, nobility, and commons assembled. Finch, Law, b. 4, c. 1, p. 103; Fleta, lib. 2, c. 2.

The application of the term—which originally denoted the place of assembling—to denote the assemblage, resembles the similar application of the Latin term *curia*, and is readily explained by the fact that the earlier courts were merely assemblages, in the court-yard of the baron or of the king himself, of those who were qualified and whose duty it was so to appear at stated times or upon summons. Traces of this usage and constitution of courts still remain in the courts baron, the various courts for the trial of impeachments in England and the United States, and in the control exercised by the parliament of England and the legislatures of the various states of the United States over the organization of courts of justice, as constituted in modern times. This meaning of the word has also been retained in the titles of some deliberative bodies, such as the "general court" of Massachusetts, *i. e.*, the legislature.

International Law

The person and suite of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. The English government is spoken of in diplomacy as the court of St. James, because the palace of St. James is the official palace.

Practice

An organ of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice. White County v. Gwin, 136 Ind. 562, 36 N.E. 237, 22 L.R.A. 402; Bradley v. Town of Bloomfield, 85 N.J. Law, 506, 89 A. 1009.

The presence of a sufficient number of the members of such a body regularly convened in an authorized place at an appointed time, engaged in the full and regular performance of its functions. Brumley v. State, 20 Ark. 77; Wightman v. Karsner, 20 Ala. 446.

A body in the government to which the administration of justice is delegated. A body organized to administer justice, and including both judge and jury. Houston Belt & Terminal Ry. Co. v. Lynch, Tex.Com.App., 221 S.W. 959, 960; People ex rel. Thaw v. Grifenhagen, Sup., 154 N.Y.S. 965, 970; Peterson v. Fargo-Moorhead St. Ry. Co., 37 N.D. 440, 164 N.W. 42, 49.

A tribunal officially assembled under authority of law at the appropriate time and place, for the administration of justice. In re Carter's Estate, 254 Pa. 518, 99 A. 58.

An agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof, and of applying the sanctions of the law, authorized to exercise its powers in due course of law at times and places previously determined by lawful authority. Isbill v. Stovall, Tex.Civ.App., 92 S.W.2d 1067, 1070.

An incorporeal, political being, composed of one or more judges, who sit at fixed times and places, attended by proper officers, pursuant to lawful authority, for the administration of justice. State v. Le Blond, 103 Ohio St. 126, 140 N.E. 510, 512. An organized body with defined powers, meeting at certain times and places for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, viz., attorneys and counsel to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands, and secure due order in its proceedings. Ex parte Gardner, 22 Nev. 280, 39 P. 570; Hertzog v. Hertzog, 104 Or. 423, 208 P. 580, 582.

It is a passive forum for adjusting disputes and has no power to investigate facts or to initiate proceedings. Sale v. Railroad Commission, 15 Cal.2d 612, 104 P.2d 38, 41.

The place where justice is judicially administered. Co. Litt. 58a; 3 Bl. Comm. 23. Railroad Co. v. Harden, 113 Ga. 456, 38 S.E. 950; Croft v. Croft, 119 N.J.Eq. 468, 182 A. 853.

The judge, or the body of judges, presiding over a court.

The words "court" and "judge," or "judges," are frequently used in statutes as synonymous. When used with reference to orders made by the court or judges, they are to be so understood. State v. Caywood, 96 Iowa, 367, 65 N.W. 385; Sale v. Railroad Commission, 15 Cal.2d 612, 104 P.2d 38, 41.

The word "court" is often employed in statutes otherwise than in its strict technical sense, and is applied to various tribunals not judicial in their character. State v. Howat, 107 Kan. 423, 191 P. 585, 589; for example, in New Jersey, the "court of pardons"; In re Court of Pardons, 97 N.J.Eq. 535, 129 A. 624, 625.

Classification

Courts may be classified and divided according to several methods, the following being the more usual:

Courts of record and courts not of record. The former being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual

memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal. Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. 3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal. 225; Erwin v. U. S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.

A "court of record" is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial. Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc., Mass., 171, per Shaw, C. J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689.

Courts may be at the same time of record for some purposes and not of record for others. Lester v. Redmond, 6 Hill, N.Y., 590; Ex parte Gladhill, 8 Metc., Mass., 168.

Superior and inferior courts. The former being courts of general original jurisdiction in the first instance, and which exercise a control or supervision over a system of lower courts, either by appeal, error, or *certiorari;* the latter being courts of small or restricted jurisdiction, and subject to the review or correction of higher courts. Sometimes the former term is used to denote a particular group or system of courts of high powers, and all others are called "inferior courts."

To constitue a court a superior court as to any class of actions, within the common-law meaning of that term, its jurisdiction of such actions must be unconditional, so that the only thing requisite to enable the court to take cognizance of them is the acquisition of jurisdiction of the persons of the parties. Simons v. De Bare, 4 Bosw., N.Y., 547.

An inferior court is a court whose judgments or decrees can be reviewed, on appeal or writ of error, by a higher tribunal, whether that tribunal be the circuit or supreme court. Nugent v. State, 18 Ala. 521.

Civil and criminal courts. The former being such as are established for the adjudication of controversies between subject and subject, or the ascertainment, enforcement, and redress of private rights; the latter, such as are charged with the administration of the criminal laws, and the punishment of wrongs to the public.

Equity courts and law courts. The former being such as possess the jurisdiction of a chancellor, apply the rules and principles of chancery law, and follow the procedure in equity; the latter, such as have no equitable powers, but administer justice according to the rules and practice of the common law.

As to the division of courts according to their *jurisdiction,* see Jurisdiction.

As to several names or kinds of courts not specifically described in the titles immediately following, see Arches Court, Appellate, Circuit Courts, Consistory Courts, County, Customary Court-Baron, Ecclesiastical Courts, Federal Courts, Forest Courts, High Commission Court, Instance Court, Justice Court, Justiciary Court, Legislative Courts, Maritime Court, Mayor's Court, Moot Court, Municipal Court, Orphans' Court, Police Court, Prerogative Court, Prize Court, Probate Court, Superior Courts, Supreme Court, and Surrogate's Court.

As to court-hand, court-house, court-lands, court rolls, courtyard, see those titles in their alphabetical order *infra.*

General

Court above, court below. In appellate practice, the "court above" is the one to which a cause is removed for review, whether by appeal, writ of error, or certiorari; while the "court below" is the one from which the case is removed. Going v. Schnell, 6 Ohio Dec. 933.

Court in bank. A meeting of all the judges of a court, usually for the purpose of hearing arguments on demurrers, points reserved, motions for new trial, etc., as distinguished from sessions of the same court presided over by a single judge or justice.

Court of competent jurisdiction. One having power and authority of law at the time of acting to do the particular act. Ex parte Plaistridge, 68 Okl. 256, 173 P. 646, 647.

One having jurisdiction under the state Constitution and laws to determine the question in controversy. Texas Employers' Ins. Ass'n v. Nunnamaker, Tex.Civ.App., 267 S.W. 749, 751. A court for the administration of justice as established by the Constitution or statute. Bradley v. Town of Bloomfield, 85 N.J.Law, 506, 89 A. 1009.

Court of limited jurisdiction. When a court of general jurisdiction proceeds under a special statute, it is a "court of limited jurisdiction" for the purpose of that proceeding, and its jurisdiction must affirmatively appear. Osage Oil & Refining Co. v. Interstate Pipe Co., 124 Okl. 7, 253 P. 66, 71.

De facto court. One established, organized, and exercising its judicial functions under authority of a statute apparently valid, though such statute may be in fact unconstitutional and may be afterwards so adjudged; or a court established and acting under the authority of a *de facto* government. 1 Bl. Judgm. § 173; In re Manning, 139 U.S. 504, 11 S.Ct. 624, 35 L.Ed. 264; Gildemeister v. Lindsay, 212 Mich. 299, 180 N.W. 633, 635.

Full court. A session of a court, which is attended by all the judges or justices composing it.

Spiritual courts. In English law. The ecclesiastical courts, or courts Christian. See 3 Bl. Comm. 61.

COURT-BARON. In English law. A court which, although not one of record, is incident to every manor, and cannot be severed therefrom. It was ordained for the maintenance of the services and duties stipulated for by lords of manors, and for the purpose of determining actions of a personal nature, where the debt or damage was under forty shillings. Wharton; 1 Poll. & Maitl. Hist. E. L. 580.

Customary court-baron is one appertaining entirely to copyholders. 3 Bl.Comm. 33.

44-259

April 1, 1971

M E M O R A N D U M

TO: Honorable William J. Moran
Chairman, House Judiciary Committee

FROM: T. R. Dunn, Secretary
Alaska Judicial Council

Following our conversation today regarding the effect of increasing District Court jurisdiction upon recording procedures, I reviewed applicable statutes and conferred with Chief Justice Boney, Chairman of the Judicial Council. It appears that the recording statutes apply to the District Court as well as the Superior Court. Specifically, the following statutes apply:

(1) AS 09.30.010 which provides that upon recording a judgment of "a court of this state" with the recorder it becomes a lien upon real property in the recording district.

(2) AS 09.45.790 provides for the filing of lis pendens with the recorder and does not distinguish between Superior and District Court actions.

(3) AS 09.40.050 provides for recordation in the case of attachment of re lty without distinguishing between District and Superior Court.

(4) AS 35.35.005, et seq., provides for liens and lien foreclosures. In each case, the claim of lien, regardless of the court in which it would be enforced would have to be recorded in the district recording office.

It does not appear that any change in the recording laws would be necessary due to expanded District Court jurisdiction. The Chief Justice has been assured by his staff that any adjustments which are required in District Court recording procedures can be made by court rule, and he foresees no difficulty in this regard.

Theodore R. Dunn
Secretary
Alaska Judicial Council

HB 287

April 16, 1971

To: Representative Moran

From: Senator Ziegler

Re: HB 289

Bill:

We passed your HB 289 unanimously on April 15th.

I am attaching copies of documents you might want to utilize in the future if the Supreme Court doesn't do as it has promised to do.

Bob

W

1971 APR 10 AM 7 28

AL392

AFA039 NL PDF

ANCHORAGE ALASKA 9

ROBERT ZIEGLER

BARANOFF HOTEL JUN

THE SUPREME COURT WILL ENACT RULES TO COVER

REMAND REMOVAL AND CHALLENGE OF JUDGES IF DISTRICT

COURT JURISDICTION IS INCREASED

GEORGE F BONEY.

TELEPHONE NO. 6-2600

TELEPHONED TO KB

TIME 8:40A

BY JC TO BE 6x602

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
P. O. BOX 979
KETCHIKAN, ALASKA 99901

POUCH V
JUNEAU, ALASKA 99801

MEMBER
RULES
COMMERCE
LEGISLATIVE COUNCIL

CHAIRMAN
JUDICIARY

Senate

April 13, 1971

The Alaska State Supreme Court
941 Fourth Avenue
Anchorage, Alaska 99501

All District Court Judges
State of Alaska

Anchorage Bar Association
c/o R. Everett Harris
1029 W. 3rd Avenue
Anchorage, Alaska 99501

Tanana Valley Bar Association
c/o Dallas Phillips
300 Barnette Street
Fairbanks, Alaska 99701

Juneau Bar Association
c/o William Ruddy
123 Seward Street
Juneau, Alaska 99801

Ketchikan Bar Association
c/o W.C. Stump
Box 2693
Ketchikan, Alaska 99901

Re: SB 152 and HB 289

Gentlemen:

It is the intent of the writer to bring everyone concerned with the two captioned bills up to date.

The Supreme Court for, in my opinion, many valid reasons, is highly desirous of having the jurisdiction of the district courts throughout the state increased from $3000 to $10,000.

Those district court judges who have been courteous enough to write to the Senate Judiciary committee have overwhelmingly indicated their willingness to assume increased responsibility and presumably an increased work load.

The Ketchikan Bar Association has done a complete 180° and now endorses both bills.

The Juneau Bar Association recently unanimously endorsed both bills.

The Anchorage Bar favored the bills on a very close vote (29-26).

As of March 26, 1971, the Tanana Valley Bar had gone on record as being in opposition to the bills; I don't have the results of any further ballots.

I endeavor to refrain from taking hasty action, as a rule. Personally, I feel that by releasing either bill at this time we might be acting prematurely, but apparently the need is great enough to warrant the action. Let us hope we are not making a mistake; we can always gain some solace by remembering that we can undo next year what we are going to do this year.

To those of you who oppose the bill, I can give you some consolation: 1) We have been assured by Chief Justice Boney of the Supreme Court that if the peremptory disqualification of district court judges bill, which has passed the Senate and which is expected to pass the House, does not in fact pass the House, then the Supreme Court will immediately promulgate a court rule authorizing peremptory disqualification procedures.

2) Remand removal will likewise be reserved by Supreme Court rule; that is to say, we can remand from the district court to the superior court in all actions involving more than $3000.

On behalf of the members of the Senate Judiciary committee, I would like to take this opportunity to thank you one and all for your interest and expressions of opinion.

It might be a good idea if the Board of Governors of the Alaska Bar Association were to have this matter placed on the agenda for the May meeting in Anchorage. The good Lord knows a lively session would thereby be assured.

Very truly yours,

Robert H. Ziegler, Sr.

HB-290

City of Anchorage

MEMORANDUM

TO: Director of Public Works **DATE:** March 19, 1971

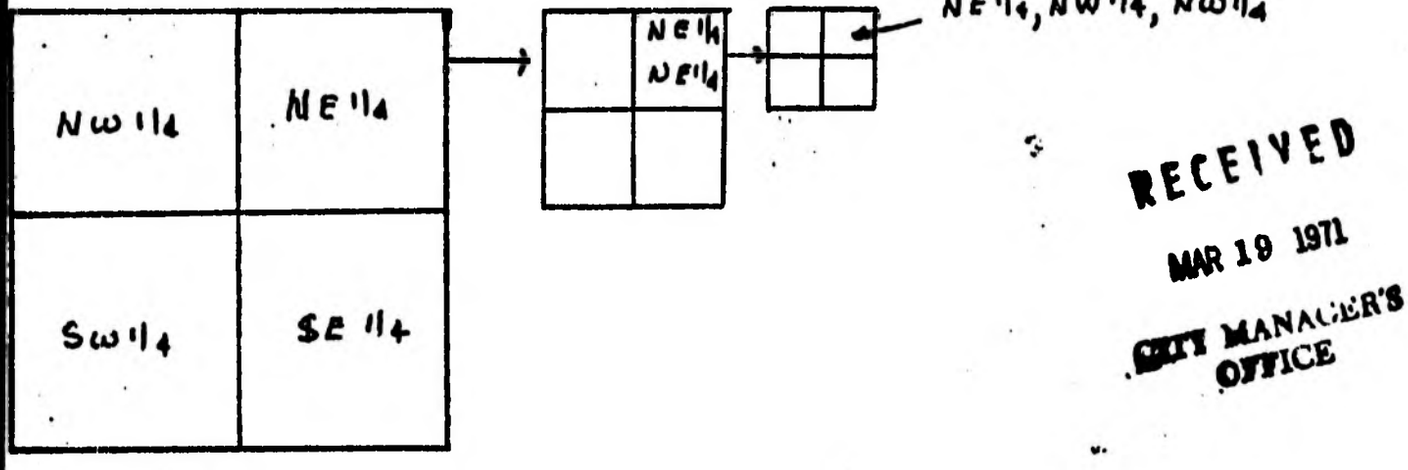
FROM: City Surveyor

SUBJECT: House Bill No. 290

The subject bill will enable a person to sell portions of his property without surveys or plats and would virtually eliminate the subdivision control of cities and borough planning commissions throughout the State.

By changing the "definition" of subdivision as per H.B. 290 a seller or his agent can divide his proerty into four or less parts and describe them by aliquot parts without any restrictions or control by any governmental agency, also it would leave the determination of what easements etc. to the sellers discretion without consulting or review of the requiring agencies of government.

Example -



As you can see from the above the rule of "four or less" parcels can be carried out indefinitely.

The above is only an example, there could be countless variations such as 1/3 or 1/8 or 1/16 or the east 50 feet of the NW 1/4 of the E 1/3 etc. and could be applied to existing subdivisions, as well as sectionalized lands. In the end we would hav complete breakdown and chaos in land subdivision in all developed a eas in Alaska.

As a final comment, the subject bill is sponsored by the Board of Realtors and has been introduced in each session for the last three years and as far as I know, the Borough, City, Professional Land Surveyors, Engineers, and Local Engineering Firms have indicated that this bill does not serve the best interests of the people of Alaska in any way.

A.W. Lahnum
City Surveyor

AWL/bmm

MEMORANDUM State of Alaska

TO: The Honorable William J. Moran
Chairman, House Judiciary Committee
Through: Kenneth W. Kadow, Commissioner
Through: W. W. Fritz, Director of Ins.

DATE : April 20, 1971

FROM: Donald P. Koch
Insurance Rate Analyst

SUBJECT: HB-293

On March 18, 1971, during an appearance before your committee, you requested additional information on Surplus Line Law exemptions. The following represents our findings.

All states provide a method to license surplus line brokers. The surplus line broker is the one who can place insurance in non-admitted markets. This seems to be contradictory to what we have found in the laws of Illinois, Texas and Wisconsin, where it appears that a carrier (insuror) may not write unless admitted to do business in those states. Further, all states except Delaware, Kentucky, Texas and Wyoming provide for the taxation of the premiums of non-admitted (unauthorized) insurors.

Some states have specific acts that concern themselves with the mechanics of serving process on unauthorized insurors. Those states, numbering 22, are: Connecticut, Delaware, Indiana, Kansas, Maine, Maryland, Massachussetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont, Virginia, and West Virginia.

Other states have specific acts that concern themselves with not only the mechanics of serving process on unauthorized insurors, but also with taxation responsibility for insuror solvency, protection of authorized insurors (who are subject to strict regulation), and with the protection of the public. States having this type of act, numbering 17, are: Alaska, Alabama, Arizona, California, Florida, Georgia, Hawaii, Idaho, Iowa, Kentucky, Louisiana, Mississippi, Montana, Ohio, Oklahoma, Utah and Washington. Copies of the exemption section of the Unauthorized Insurors Act from these states are attached, except for Mississippi which has no exemption listed. A comparison of exceptions is also attached.

Of the seventeen states listed in the last paragraph, seven states exempt aircraft owned or operated by manufactures of aircraft. These are: Alaska, Alabama, Georgia, Idaho, Louisiana, Montana and Washington. Arizona and Hawaii have similar aircraft exemption sections but are silent as regards manufacturers aircraft. California exempts aircraft. Seven states: Florida, Iowa, Kentucky, Mississippi, Ohio, Oklahoma and Utah, do not provide exemptions for aircraft.

We have been unable to learn definitive reasons for the various differences in exemptions used by the various states. It appears that lobby groups account for many of the exemptions.

AIRCRAFT EXEMPTIONS

ALASKA	EXCLUDES AIRCRAFT OWNED OR OPERATED BY MANUFACTURERS OF AIRCRAFT; AIRCRAFT OPERATED IN SCHEDULED INTERSTATE FLIGHTS; CARGO ON INTERSTATE FLIGHTS; LIABILITY ON AIRCRAFT (EXCLUDING WORKMEN'S COMPENSATION) ARISING OUT OF THE OWNERSHIP, MAINTENANCE OR USE.
[illegible]	SAME AS ALASKA
[illegible]	[illegible] AIRCRAFT OR CARGO OF SUCH AIRCRAFT, OR AGAINST LIABILITY OTHER THAN EMPLOYER'S LIABILITY, ARISING OUT OF THE OWNERSHIP, MAINTENANCE, [illegible] OF SUCH AIRCRAFT.
[illegible]	[illegible] AIRCRAFT INSURANCE
[illegible]	NO EXEMPTION
[illegible]	SAME AS ALASKA
[illegible]	SAME AS [illegible]
[illegible]	SAME AS ALASKA EXCEPT "SCHEDULED INTERSTATE" AND "INTERSTATE" IS REPLACED BY "COMMERCIAL INTERSTATE"
[illegible]	NO EXEMPTION
[illegible]	NO EXEMPTION
[illegible]	SAME AS ALASKA
[illegible]	SAME AS ALASKA
[illegible]	NO EXEMPTION
[illegible]	NO EXEMPTION
[illegible]	NO EXEMPTION
[illegible]	SAME AS ALASKA

PROPERTY OF OPERATION OF RAILROADS ENGAGED IN INTERSTATE COMMERCE

[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	NO EXEMPTION
[illegible]	EXEMPTED
[illegible]	NO EXEMPTION
[illegible]	EXEMPTED
[illegible]	NO EXEMPTION
[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	NO EXEMPTION
[illegible]	NO EXEMPTION
[illegible]	NO EXEMPTION
[illegible]	NO EXEMPTION
[illegible]	EXEMPTED

INSURANCE ON SUBJECTS LOCATED, RESIDENT, OR TO BE PERFORMED WHOLLY OUTSIDE OF THE STATE, OR ON VEHICLES OR AIRCRAFT OWNED AND PRINCIPALLY GARAGED OUTSIDE OF THE STATE.

ALASKA	EXEMPT
ARIZONA	EXEMPT
ARKANSAS	EXEMPT
CALIFORNIA	EXEMPTION IMPLIED
COLORADO	EXEMPTION IMPLIED
CONNECTICUT	EXEMPT
DELAWARE	EXEMPT
IDAHO	EXEMPT
ILLINOIS	EXEMPT
INDIANA	EXEMPT
IOWA	EXEMPT
KANSAS	EXEMPT
LOUISIANA	EXEMPT
MAINE	EXEMPT
MARYLAND	TAXED
MASSACHUSETTS	NOT SPECIFIED
MICHIGAN	EXEMPT
MINNESOTA	EXEMPT

REINSURANCE

ALASKA	EXEMPTED
[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	EXEMPTED
FLORIDA	NO EXEMPTION
[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	NO EXEMPTION
[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	EXEMPTED

WET OR OCEAN MARINE

[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	EXEMPTED
FLORIDA	NO EXEMPTION
GEORGIA	EXEMPTED
[illegible]	EXEMPTED
IDAHO	EXEMPTED
[illegible]	EXEMPTED
[illegible]	NO EXEMPTION
[illegible]	EXEMPTED
[illegible]	EXEMPTED
[illegible]	NO EXEMPTION
[illegible]	NO EXEMPTION
[illegible]	EXEMPTED
[illegible]	EXEMPTED

TRANSPORTATION INSURANCE

ALASKA	EXEMPTED
CALIFORNIA	EXEMPTED
ARIZONA	NO EXEMPTION
CONNECTICUT	EXEMPTED
FLORIDA	NO EXEMPTION
GEORGIA	NO EXEMPTION
HAWAII	NO EXEMPTION
IDAHO	NO EXEMPTION
IOWA	NO EXEMPTION
KENTUCKY	NO EXEMPTION
LOUISIANA	NO EXEMPTION
MICHIGAN	EXEMPTED
OHIO	NO EXEMPTION
OKLAHOMA	NO EXEMPTION
UTAH	NO EXEMPTION
WISCONSIN	NO EXEMPTION

Division of Insurance

March 18, 1971

HB-293

Chapter 33 of the Alaska insurance law is the chapter dealing with unauthorized insurers and surplus lines. Insurance premium taxes due under this chapter are the responsibility of the surplus line broker who must collect same from the insured and remit to the Division of Insurance. In the case of admitted insurers the premium tax is collected as an integral part of the premium by the admitted insurer.

Several of our major aircraft operators in Alaska have been leasing aircraft from the manufacturer or purchasing aircraft on contract where title to the aircraft is retained by the manufacturer until equity of the operator reaches an agreed upon level. The operators furnish their own pilots and insurance but declare themselves exempt from the surplus line insurance premium tax due to the exemption found in AS 21.33.310 (4).

The section exempts "insurance of aircraft owned or operated by manufacturers of aircraft...". This wording allows the private operator of a manufacturer owned aircraft to avoid the premium tax on surplus line insurance. By changing the wording as indicated in HB-293 you would remove the loophole. In November of 1970 the Division of Insurance conducted an investigation which brought an actual case to light. The indicated tax loss to the State of Alaska for this one case was about $50,000, so it can be seen that the loophole is substantial.

Upon checking into the reasons for the "manufacturers of aircraft" exemption, we found that the Alaska surplus line insurance law was modeled after the Washington law. This item appears in their law as a concession to Boeing Corporation. This information was developed in a conversation with Mr. Irwin Mesher who is the arbitrator for the surplus line association of Washington. It is his opinion that we would not accomplish a solution to a tax avoidance situation. He indicated the the lessor would merely negotiate with the lessee to place the insurance and make the costs a part of the lease contract. However, we feel that this action would not circumvent liability for this tax.

ment has been served as provided in this section, the court is considered to have jurisdiction in personam of the insurer.

(b) By issuing a policy under a surplus line contract, an unauthorized insurer authorizes service of process against it in the manner and to the effect as provided in this section. The policy shall contain a provision stating the substance of this section, and shall designate the person to whom the department shall mail process. (§ 1 ch 120 SLA 1966)

Sec. 21.33.310. Exemptions from surplus line law. The provisions of this surplus line insurance law controlling the placing of insurance with unauthorized insurers do not apply to reinsurance or to the following insurances when placed by licensed insurance agents of this state:

(1) wet marine and transportation insurances;

(2) insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state;

(3) insurance on property or operations of railroads engaged in interstate commerce;

(4) insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of such aircraft, or insurance against liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance or use of the aircraft. (§ 1 ch 120 SLA 1966)

Sec. 21.33.320. Records of insureds. In order that the director may effectively administer this chapter, each person who has placed insurance with an unauthorized insurer shall, upon the director's order, produce for his examination all policies and other documents evidencing the insurance, and shall disclose to the director the amount of premiums paid or agreed to be paid for the insurance. For each refusal to obey the order the person, upon conviction, is guilty of a misdemeanor punishable by a fine of not more than $500. (§ 1 ch 120 SLA 1966)

Sec. 21.33.330. Surplus line broker defined. A surplus line broker is an individual licensed to transact business in the state or on risks in the state for an unadmitted insurer. (§ 1 ch 120 SLA 1966)

Submitted with memo from
Don Koch, Insurance Rate Analyst
HB-293 April 20, 1971

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(3) insurance on property or operations of railroads engaged in interstate commerce;

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Superintendent. As to the same unauthorized insurer and all insurance coverages issued or accepted by it under this Act, no more than one person shall at any one time be the designee to whom copies of process against the insurer, served upon the Superintendent, shall be forwarded.

(4) Where process is served upon the Superintendent as an insurer's process agent, the insurer shall not be required to answer or plead except within thirty (30) days after the date upon which the Superintendent mailed a copy of the process served upon him as required by subsection (2), above.

(5) Process served upon the Superintendent, and copy thereof forwarded as in this section provided, shall for all purposes constitute valid and binding service thereof upon the insurer.

Section 21. EXEMPTIONS. The provisions of this Unauthorized Insurers Act controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed agents or brokers or the ship building and/or repair industry of this State:

(1) Transportation insurance;

(2) Insurance on subjects located, resident, or to be performed wholly outside of this State, or on vehicles or aircraft owned and principally garaged outside this state;

(3) Insurance on property or operation of railroads engaged in interstate commerce; and

(4) Insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight, or cargo of such aircraft, or against liability, other than workmen's compensation and the employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(5) Life insurance, health and accident insurance, annuities, and disability insurance.

(6) The property and operations of the ship building and ship repair industry engaged in interstate or foreign commerce, and vessels, cargoes, watercraft, piers, wharves, graven docks, drydocks, marine railways and building ways, commonly known as wet marine.

Section 22. REPORT AND TAX OF INDEPENDENTLY PROCURED COVERAGES. (1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer, or any self-insurer who in this state so procures or continues excess loss, catastrophe or

able as costs in the action. The director shall forthwith mail one copy of the process so served to the person designated by the insurer in the policy for the purpose, by registered mail with return receipt requested. The insurer shall have forty days after such date of mailing within which to plead answer, or otherwise defend the action.

Sec. 20. EXEMPTIONS FROM SURPLUS LINES PROVISIONS. (a) The sections of this article relative to surplus line coverages shall not apply to reinsurance, nor to the following classes of insurance when placed by licensed agents or brokers of this state:

(1) Ocean marine and foreign trade insurance.

(2) Insurance on subjects located, resident, or to be performed wholly outside this state, or on vehicles or aircraft owned and principally garaged outside this state.

(3) Insurance on property or operations of railroads engaged in interstate commerce.

(4) Insurance on aircraft or cargo of such aircraft, or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such aircraft.

(b) Agents and brokers so placing any such insurance with an unauthorized insurer shall keep a record of each such coverage in detail as required of surplus line insurance by section 14 of this article. The record shall be preserved for not less than three years from the effective date of the insurance, and shall be so kept available in this state and open to the examination of the director.

Sec. 21. RECORDS OF INSUREDS. Upon the director's request any person in Arizona who is the insured under any policy issued by an unauthorized insurer upon a subject of insurance resident, located, or to be performed in Arizona at the time the policy was issued, shall produce for examination all policies and other documents evidencing and relating to the insurance, and shall disclose the amount of the gross premiums paid or agreed to be paid for the insurance, through whom the insurance was procured, and such other information relative to the placing of such insurance as may reasonably be required.

Sec. 22. ALIEN INSURANCE FOR COVERAGE IN MEXICO. (a) No person shall in Arizona solicit or accept applications for vehicle insurance, which insurance is to be effective in Mexico and only outside the geographical limits of Arizona and is to be issued by an alien insurer or insurer not authorized to transact insurance in Arizona, unless such person is a duly licensed surplus line broker.

lish different standards for such a certification the certificate shall become void and must be surrendered to the commissioner. In that case the fees for certification and examination under the new standards shall be the same as for original certification and examination. A person shall not hold a certificate under this section while licensed as a life agent, disability only agent, or life and disability agent.

(Added by Stats. 1967, Ch. 1707.)

CHAPTER 6. SURPLUS LINE BROKERS

1760. Any citizen of this State may negotiate and effect insurance on his own property with any nonadmitted insurer.

1760.5. The provisions of this chapter limiting the insurance which may be placed with nonadmitted insurers and requiring any report thereof shall not apply to:

(a) Reinsurance of the liability of an admitted insurer.

(b) Insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other shipowner interests; upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, drydocks and marine railways, including insurance of ship repairer's liability, and protection and indemnity insurance, but excluding insurance covering bridges or tunnels.

(c) Aircraft insurance.

(d) Insurance on property or operations of railroads engaged in interstate commerce.

The insurance specified in the foregoing paragraphs (b), (c), and (d), may be placed with a nonadmitted insurer only by and through a special lines' surplus line broker. The license of a special lines' surplus line broker shall be applied for and procured and shall be subject to the same fees for filing on issuance in the same manner as the license of a surplus line broker, except that in lieu of the bond required by Section 1765, there shall be delivered to the commissioner a bond in the form, amounts, and conditions specified in Sections 1663, 1664 and 1665 of this code and only one fee shall be collected from one person for both licenses. Such licensee in respect to such business shall be subject to all the provisions of this chapter except Sections 1761, 1763 and 1775.5.

The commissioner may, in respect to business written or placed under the provisions of this section, require such information and reports thereof as he considers necessary, convenient or advisable for tax or statistical purposes.

Each placing of insurance in violation of this chapter is a misdemeanor.

The commissioner may revoke, suspend or deny any license granted pursuant to this code in accordance with the procedure

provided in Article 13 of Chapter 5 of this part, or any certificate of authority granted pursuant to this code in accordance with the procedure provided in Section 704 whenever he finds that the licensee or holder of the certificate has committed a violation of this section.

The premium for insurance placed by or through a special lines' surplus line broker pursuant to this section shall not be subject to the tax imposed upon such broker based upon gross premiums paid for insurance placed under authority conferred by his license.

(Added by Stats. 1937, Ch. 729; amended by Stats. 1945, Ch. 901, by Stats. 1959, Ch. 4, and by Stats. 1961, Ch. 280.)

1761. Except as provided in Sections 1760 and 1760.5, a person within this State shall not transact any insurance on property located or operations conducted within, or on the lives or persons of residents of this State with nonadmitted insurers, except by and through a surplus line broker licensed under this chapter and upon the terms and conditions prescribed in this chapter.

(Amended by Stats. 1937, Ch. 729.)

1762. (Repealed by Stats. 1937, Ch. 729.)

1763. A surplus line broker may solicit and place insurance, other than as excepted in Section 1761, with nonadmitted insurers only if such insurance can not be procured from a majority of the insurers admitted for the particular class or classes of insurance. Such part of the insurance as can not be so procured may be procured from nonadmitted insurers, if the insurance is not placed in a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate which will be accepted by any admitted insurer. It shall be conclusively presumed that insurance is placed in violation of this paragraph where the insurance is actually placed with a nonadmitted insurer at a lower rate of premium or lower premium than the lowest rate of premium or the lowest premium which could be obtained from an admitted insurer unless, at the time such insurance attaches, there is filed with the commissioner a statement describing the insurance, specifying the rate and the nearest procurable rates from admitted insurers. Unless the commissioner within five days after such filing notifies the filing broker that in his opinion the placing of the insurance constitutes a violation of this section, the broker may thereafter maintain in effect such insurance. If within such five-day period the commissioner notifies the surplus line broker that such insurance is in violation of this section and orders the broker to effect termination of such insurance within 10 days from such notice, and the broker fails or refuses to effect such termination, such failure or refusal is a violation of this section. Statements filed under this section shall not be subject to public inspection unless the commissioner determines that the public interest or the welfare of the filing broker requires that any statement be made so subject. The commissioner may make and publish reasonable rules and regulations, consistent

agent to be the true and lawful attorney of such unauthorized insurer upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance and service of process effected on such commissioner, his successor or successors in office or such resident agent shall be deemed to confer complete jurisdiction over such unauthorized insurer in such action.

History.—§351, ch. 59-205.

Note.—Similar provisions found in former §625.33.

626.0510 Surplus lines law; short title; purposes.—

(1) Sections 626.0510 through 626.0534 constitute and may be referred to as "the surplus lines law."

(2) It is declared that the purposes of the surplus lines law are to provide orderly access for the insuring public of Florida to insurers not authorized to transact insurance in this state, through only qualified, licensed, and supervised surplus lines agents resident in Florida, for insurance coverages and to the extent thereof not procurable from authorized insurers; to protect such authorized insurers, which under the laws of Florida must meet certain standards as to policy forms and rates, from unwarranted competition by unauthorized insurers who, in the absence of this law, would not be subject to similar requirements; and for other purposes as set forth in this surplus lines law.

(3) This section, and this surplus lines law, do not apply as to insurance coverages which are subject to §626.0535 (report and tax of independently procured coverages).

History.—§352, ch. 59-205.

626.0511 Definitions.—As used in this surplus lines law:

(1) "Surplus lines agent" means an individual licensed as provided in part VI of this chapter to handle the placement of insurance coverages with unauthorized insurers; and to place such coverages with authorized insurers as to which the licensee is not licensed as an agent if so placed through a countersigning Florida licensed resident agent of such insurer.

(2) "Surplus lines insurer" means an unauthorized insurer in which an insurance coverage is placed or may be placed under this surplus lines law.

(3) To "export" means to place in an unauthorized insurer under this surplus lines law, insurance covering a subject of insurance resident, located, or to be performed in Florida.

History.—§353, ch. 59-205.

Note.—Similar provisions found in former §645.01.

626.0512 Surplus lines insurance authorized.—If certain insurance coverages of subjects resident, located, or to be performed in this state cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines," may be procured from unauthorized insurers, subject to the following conditions:

(1) The insurance must be eligible for export under §626.0513 or §626.0514;

(2) The insurer must be an eligible surplus lines insurer under §626.0514 or §626.0515;

(3) The insurance must be so placed through a licensed Florida surplus lines agent resident in Florida; and

(4) The other applicable provisions of this surplus lines law must be complied with.

History.—§354, ch. 59-205.

626.0513 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(a) The full amount of insurance required must not be procurable, after a diligent effort has been made to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in this state, and the amount of insurance exported shall be only the excess over the amount so procurable from authorized insurers.

(b) The premium rate at which the coverage is exported shall not be lower than that rate applicable, if any, and filed by and in actual and current use by a majority of the authorized insurers for the same coverage on a similar risk.

(c) The policy or contract form under which the insurance is exported shall not be more favorable to the insured as to the coverage or rate than under similar contracts on file and in actual current use in this state by the majority of authorized insurers actually writing similar coverages on similar risks; except, that a coverage may be exported under a unique form of policy designed for use with respect to a particular subject of insurance if a copy of such form is filed with the commissioner by the surplus lines agent desiring to use the same and is subject to the commissioner's disapproval within not less than ten days if he finds that use of such special form is not reasonably necessary for the principal purposes of the coverage or that its use would be contrary to the purposes of this surplus lines law with respect to the reasonable protection of authorized insurers from unwarranted competition by unauthorized insurers.

(d) Except as to extended coverage in connection with fire insurance policies and except as to windstorm insurance, the policy or contract under which the insurance is exported shall not provide for deductible amounts, in determining the existence or extent of the insurer's liability, other than those available under similar policies or contracts in actual and current use by one or more authorized insurers. This paragraph shall not apply with respect to workmen's compensation self-insurance qualified as such under chapter 440.

(2) Except, that the commissioner may by rules and regulations declare eligible for export generally and notwithstanding the provisions of paragraphs (a), (b), (c) and (d) of subsection (1), any class or classes of insurance coverage or risk for which he finds, after a hearing, which he shall hold annually or more often, of which notice thereof was given to each insurer authorized to transact such class or classes in this state, that there is no reasonable or adequate market among authorized insurers. Any such rules and regulations shall continue in effect during the existence of the conditions upon which predicated, but subject to earlier termination by the commissioner.

(3) Subsection (1) does not apply to wet marine and transportation or aviation risks which are subject to §626.0514.

History.—§356, ch. 59-205.
Note.—Similar provisions found in former §645.05.

626.0514 Eligibility for export; wet marine, aviation.—

(1) Insurance coverage of wet marine and transportation or aviation risks of a class under the supervision and control of syndicate operations of authorized insurers, such as the American hull syndicate, the tugboat syndicate and other like constituted and recognized wet marine or aviation syndicate operations, may be exported under the following conditions:

(a) The insurance must be placed only by or through a licensed Florida surplus lines agent;

(b) The insurer must be one made eligible by the commissioner specifically for such coverages, based upon information furnished by the insurer and indicating that the insurer is well able to meet its financial obligations; and

(c) The surplus lines agent shall, within sixty days after procurement of the policy or contract, file with the commissioner a copy of the policy, cover note or contract.

(2) This section shall not apply as to boats under thirty-six feet in length, nor as to private aircraft owned by private owners for business and pleasure purposes only (excluding commercial), exclusive of check flight or ferry flight coverage only.

History.—§356, ch. 59-205.
Note.—Similar provisions found in former §645.05.

626.0515 Eligible surplus lines insurers.—

(1) No surplus lines agent shall place any coverage with any unauthorized insurer which is not then an eligible surplus lines insurer as provided for under this section.

(2) No unauthorized insurer shall be or become an eligible surplus lines insurer unless made eligible by the commissioner in accordance with the following conditions:

(a) Eligibility of the insurer must be requested in writing by a licensed surplus lines agent;

(b) The insurer must be currently an authorized insurer in the state or country of its domicile as to the kind or kinds of insurance proposed to be so placed, and must have been such an insurer for not less than the three years next preceding; or must be the wholly-owned subsidiary of an already eligible surplus lines insurer that has been so eligible for a period of not less than the three years next preceding;

(c) Before granting eligibility the requesting surplus lines agent or the insurer shall furnish the commissioner with a duly authenticated copy of its current annual financial statement in the English language and with all monetary values therein expressed in United States dollars, at an exchange rate—in the case of statements originally made in the currencies of other counties—then current and shown in the statement, and with such additional information relative to the insurer as the commissioner may request;

(d) The insurer, if organized under the laws of a state of the United States, must have surplus as to policyholders of not less than the amount required under this code for a like authorized insurer; or, if an alien insurer, must have and maintain in the United States a trust fund for the protection of all its policyholders in the United States under terms deemed by the commissioner to be reasonably adequate, in the amount of not less than four hundred thousand dollars, or, in the alternative, such a trust fund in the amount of not less than two hundred fifty thousand dollars as part of surplus to policyholders maintained in the United States in amount not less than that required under this code for a like newly authorized insurer. Any such surplus as to policyholders or trust fund shall be represented by investments consisting of public obligations of the United States, or of any state, county, or municipality thereof, or by other investments of the same general character and quality as are eligible investments for like funds of like domestic insurers under part II of chapter 625 of this code;

(e) The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims;

(f) The insurer must be eligible, as for authority to transact insurance in this state, under subsections (3) (management and affiliations), and (4) (voting control or operation by alien government or agency) of §624.0203; and

(g) This subsection does not apply as to unauthorized insurers made eligible under §626.0514 as to wet marine and aviation risks as in such section provided.

(3) The commissioner shall from time to time publish a list of all currently eligible surplus lines insurers, and shall mail a copy thereof to each licensed surplus lines agent at his office last of record with the commissioner.

(4) This section shall not be deemed to cast upon the commissioner any duty or responsibility to determine the actual financial condition or claims practices of any unauthorized insurer; and status of eligibility, if granted

surer shall be sued, upon any cause of action arising in this State under any contract issued by it as a surplus line contract pursuant to this Chapter, in the superior court of the county in which the cause of action arose.

(2) Every unauthorized insurer issuing or delivering a surplus line policy through a surplus line broker in this State shall be deemed thereby to have appointed the Commissioner as its attorney for acceptance of service of all legal process issued in this State in any action or proceeding arising out of such policy, and service of such process upon the Commissioner shall be lawful personal service upon such insurer.

(3) Each surplus line policy shall contain a provision stating the substance of subsection (2) of this section, and designating the person to whom the Commissioner shall mail process as provided in subsection (4) of this section.

(4) Duplicate copies of legal process against such insurers shall be served upon the Commissioner, and at time of service the plaintiff shall pay the Commissioner two ($2.00) dollars, taxable as costs in the action. The Commissioner shall forthwith mail one copy of the process so served to the person designated by the insurer in the policy for the purpose, by registered mail with return receipt requested. The insurer shall have thirty (30) days after such date of mailing within which to plead, answer, or otherwise defend the action.

56-627. Exemptions from Surplus Line Law.—The provisions of this Surplus Line Insurance Law controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed agents or brokers of this State:

(1) Ocean marine and foreign trade insurances;

(2) Insurance on subjects located, resident, or to be performed wholly outside of this State, or on vehicles or aircraft owned and principally garaged outside this State;

(3) Insurances on property or operation of railroads engaged in interstate commerce;

(4) Insurance of aircraft owned or operated by manufacturers of aircraft or operated in scheduled interstate flight, or cargo of such aircraft or against liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

56-628. **Report of and tax on independently procured coverages.**—(1) Every insurer who in this State procures or causes to be procured or continues or renews insurance in an unauthorized insurer upon a subject of insurance resident, located, or to be performed within this State, other than insurance procured through a surplus line broker pursuant to the Surplus Lines Insurance Law of this State or exempted from such law under section 56-627, shall within thirty (30) days after the date such insurance was so procured, continued, or renewed, file a report of the same with the Commissioner, in writing and upon forms designated by the Commissioner and furnished to such an insured upon request. Such report shall state the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently paid thereon, and such additional information as reasonably requested by the Commissioner.

(2) For the general support of the Government of this State, there is levied and there shall be collected from every such insured in this State for the privilege of so insuring his property or interests, a tax at the rate of four (4%) percent of the gross premium paid for any such insurance, after deduction of return premiums, if any. Such tax shall be paid to the Commissioner, coincidentally with the filing of the report provided for in subsection (1) above.

(3) The tax imposed hereunder if delinquent shall bear interest at the rate of six (6%) percent per annum, compounded annually.

be recovered by an action instituted by the Commissioner in any court of competent jurisdiction.

Sec. 8463.15. Suspension or Revocation of License: 1. The Commissioner may suspend or revoke any surplus line broker's license:

(1) If the broker fails to file his annual statement or to pay the tax as required by sections 8463.12, 8463.13 and 8463.14, or

(2) If the broker fails to maintain an office in this Territory, or to keep the records, or to allow the Commissioner to examine his records as required by sections 8463.01 through 8463.17, or

(3) For any of the causes for which a general agent's license may be suspended or revoked.

2. The procedures provided by this chapter for the suspension or revocation of general agents' licenses shall be applicable to suspension or revocation of a surplus line broker's license.

3. No broker whose license has been so revoked shall again be so licensed within one year thereafter, nor until any fines or delinquent taxes owing by him have been paid.

Sec. 8463.16. Exemptions: 1. The provisions of sections 8463.01 through 8463.17 controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurance when so placed by licensed general agents of this Territory:

(1) Ocean marine insurance.

(2) Insurance on subjects located, resident, or to be performed wholly outside this Territory, or on vehicles or aircraft owned and principally garaged outside this Territory.

(3) Insurance of aircraft or cargo of such aircraft, or against liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance, or use of such aircraft.

2. No provision of this chapter shall be construed as prohibiting any person from procuring any insurance which is not, at the time of procuring such insurance, written by any insurer authorized to transact business in this Territory.

Sec. 8463.17. Legal Process against Unauthorized Insurer: 1. An unauthorized insurer shall be sued, upon any cause of action arising in this Territory under any contract issued by it as a surplus line contract, pursuant to sections 8463.01 through 8463.17, or otherwise, in the Circuit Courts of this Territory.

2. Any of the following acts in this Territory, effected by mail or otherwise, by an unauthorized foreign or alien insurer:

(1) the issuance or delivery of contracts of insurance to residents of this Territory or to corporations authorized to do business therein,

(2) the solicitation of applications for such contracts,

(3) the collection of premiums for such contracts, or

(4) any other transaction of insurance business,

is equivalent to and shall constitute an appointment by such insurer

of this law would not be subject to similar requirements; and for other purposes as set forth in this law. [1961, ch. 230, § 255, p. 645.]

Comp. leg. Alaska Comp. Laws 1958 Supp., §§ 42-2-13—42-2-130.
Ariz. Rev. Stat., §§ 20-407—20-420.
Ark. Stat. 1947, §§ 66-2903—66-2925.
Cal. Deering's Codes, Insurance Code, §§ 1760-1780.
Colo. Rev. Stat. 1953, §§ 72-14-1—72-14-17.
Fla. Stat. Ann., §§ 626.0610-626.0624.
Ga. Code Ann., §§ 56-613—56-625.
Kans. Gen. Stat. 1949, §§ 40-2160—40-2169.
Ky. Rev. Stat., §§ 304.5-06-304.5-96.
La. Rev. Stat. 1950, §§ 22:1257-22:1258.
Minn. Code 1945, §§ 5705.02—5705.04.
Mont. Rev. Codes 1947, §§ 40-3101—40-3126.
Nev. Rev. Stat., §§ 686.270-686.300.
N. Mex. Stat. 1953, §§ 58-5-31—58-5-47.
N. Dak. Cent. Code, §§ 26-09B-01—26-09B-13.
Ore. Rev. Stat., §§ 750.010-750.110.
Puerto Rico. Laws Ann., tit. 26, §§ 1007-1019.
S. Dak. Code, 1960 Supp., §§ 31.14A01-31.14A13.
Utah. Code Ann. 1953, §§ 31-15-1—31-15-16.
W. Va. Code 1955, §§ 3472(32)-3472(50).

See, to sec. ref. This section is referred to in § 41-1201.

41-1212. Exemptions from surplus line law.—(1) The provisions of this surplus line law controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or, except as to subsection (2) below, to the following insurances when so placed by licensed agents or surplus line brokers of this state:

(a) Ocean marine and foreign trade insurances.

(b) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.

(c) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in commercial interstate flight, or cargo of such aircraft, or against liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(2) Brokers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this law. The record shall be preserved for not less than five (5) years after the effective date of the insurance and shall be kept available in this state and open to the examination of the commissioner. The broker shall furnish to the commissioner at his regular annual reporting time a report of all such coverages so placed in a designated calendar year. [1961, ch. 230, § 256, p. 645.]

See, to sec. ref. This section is referred to in §§ 41-1201, 41-1211, 41-1213.

41-1213. Definitions.—(1) "Broker" as used in this chapter means a surplus line broker duly licensed as such under this chapter.

(2) To "export" means to place an unauthorized insurer under this surplus line law insurance covering a subject of insurance resident, located, or to be performed in Idaho. [1961, ch. 230, § 257, p. 645.]

See, to sec. ref. This section is referred to in §§ 41-1201, 41-1211.

41-1214. Conditions for export.—If certain insurance coverages cannot be procured from authorized insurers, hereinafter designated "surplus lines", may be procured from unauthorized insurers, subject to the following conditions:

(1) The insurance must be procured through a licensed surplus line broker.

available to this state by virtue of Public Law 79-15, 79th Congress of the United States, Chapter 20, 1st Sess., S. 340, 59 Stat.L. 33; 15 U.S.C. 1011 to 1015 incl., as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states. [Acts 1967 (62 G.A.) c365, §3]

507A.3 Definitions- scope. Unless otherwise indicated, the term "insurer" as used in this section includes all corporations, associations, partnerships and individuals engaged in the business of insurance. Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer is defined to be doing an insurance business in this State.

1. The making of or proposing to make, as an insurer, an insurance contract.

2. The taking or receiving of any application for insurance.

3. The receiving or collection of any premiums, membership fees, assessments, dues or other considerations for any insurance.

4. The issuance or delivery of contracts of insurance to residents of this state or to corporations or persons authorized to do business in this state.

5. The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.

6. The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the insurance laws of this state.

7. Any other transactions of business relating directly to insurance in this state by an insurer.

The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. [Acts 1967 (62 G.A.) c365, §1]

507A.4 Transactions when law not applicable. The provisions of this chapter shall not apply to:

1. The lawful transaction of surplus lines insurance as permitted by sections five hundred fifteen point one hundred forty-seven (515.147) through five hundred fifteen point one hundred fifty (515.150) of the Code.

2. The lawful transaction of reinsurance by insurers.

3. Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or loss.

4. Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state, covering subjects of insurance not resident located, or expressly to be performed in this state at the time of issue, and which transactions are subsequent to the issuance of the policy.

5. Transactions in this state involving group or blanket insurance and group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business.

6. Transactions in this state involving any policy of insurance issued prior to July 1, 1967.

7. Any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions organized and operated without profit to any private shareholder or individual by issuing insurance and annuity contracts direct from the home office of the company and without agents or representatives in this state only to or for the benefit of such institutions and to individuals engaged in the services of such institutions; nor shall this chapter apply to any life, disability or annuity contracts issued by such life insurance company, provided such contracts otherwise comply with the statutes.

8. Insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk including strikes and war risks commonly insured under ocean or wet marine forms of policy.

9. Transactions involving risks located in this state where the policy or contract of insurance for such risk was principally negotiated and delivered outside this state and was lawfully issued in a state or foreign country in which the foreign or alien insurer was authorized to do an insurance business, and where such insurer has no contact with this state except in connection with inspections or losses required by virtue of the contract or policy of insurance covering the risk located in this state. [Acts 1967 (62 G.A.) ch365, §5]

507A.5 Proscribed acts binding on insurer.

1. No person or insurer shall directly or indirectly perform any of the acts of doing an insurance business as defined in this chapter except as provided by and in accordance with the specific authorization by statute. However, should any unauthorized person or insurer perform any act of doing an insurance business as set forth in this chapter, it shall be equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon him, his executor or

quested. Upon service of process upon the commissioner and the commissioner mailing such process to the insurer's designee, the court shall be deemed to have jurisdiction in personam of the insurer.

(3) An unauthorized insurer issuing such policy shall be deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this section. Any such policy shall contain a provision stating the substance of this section, and designating the person to whom the commissioner shall mail process as provided in subsection (2) of this section. (1950, c. 21, § 1)

Actions against insurance companies, where may be brought, KRS 452.445

Corporations other than foreign insurance companies, agent for service of process, KRS 271.385

304.597 Exemptions concerning placing of insurance with unauthorized insurers; records. (1) The provisions of KRS 304.580 to 304.598 controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance, nor to the following insurance when so placed by licensed agents of this state:

(a) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state;

(b) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(2) Agents so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under KRS 304.580 to 304.598. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state and open to the commissioner's examination. The agent shall furnish to the commissioner at his request a report of all such coverages so placed in a designated calendar year. (1950, c. 21, § 1; 1954, c. 203, § 12; effective June 17, 1954)

304.598 Records of insureds. Every person for whom insurance has been placed with an unauthorized insurer pursuant to or in violation of KRS 304.580 to 304.598 shall, upon the commissioner's order, produce for his examination all policies and other documents evidencing the insurance, and shall disclose to the commissioner the amount of the gross premiums paid or agreed to be paid for the insurance. For each refusal to obey such order, such person shall be liable to a fine of not more than five hundred dollars. (1950, c. 21, § 1)

a true copy thereof, to the person designated by the insurer in the policy for the purpose by prepaid registered mail with return receipt requested. The insurer shall have forty days from the date of service upon the Secretary of State within which to plead, answer, or otherwise defend the action. Upon service of process upon the Secretary of State in accordance with this provision, the court shall be deemed to have jurisdiction in personam over the insurer.

C. An unauthorized insurer issuing such policy shall be deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this Section. Any such policy shall contain a provision stating the substance of this Section, and designating the person to whom the Secretary of State shall mail process as provided in Subsection B of this Section.

§ 1269. Exemptions

A. The provisions of R.S. 22:1256 through 22:1268 and of 22:1270 controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed surplus line brokers of this state, except that on or before March 1st of each year a tax on the portion of the premiums received from ocean marine and foreign trade coverages which is properly allocable to the risks or exposures located in this state during the preceding calendar year shall be due at the rate of two and one-half percent per annum, such tax when collected to be paid to the State Treasurer and to be credited to the General Fund, and such licensed surplus line broker placing ocean marine insurance shall be subject to the provisions of Section 1252, notwithstanding the provisions of Section 1249 and 1252, and must show on any document issued by and/or delivered by them evidencing such insurance, all of the insurers and must clearly stamp on any such documents that on the demand of the assured or its representative the latest financial statements of any such insurers are available at its office for inspection:

(1) Ocean marine and foreign trade insurance.

(2) Insurance on subjects located, resident, or to be

performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside of this state.

(3) Insurance on property or operation of railroads engaged in interstate commerce.

(4) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in schedule interstate flight, or cargo of such aircraft, or against liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

B. Surplus line brokers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this Part. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state and open to the examination of the Commissioner of Insurance. The surplus line broker shall furnish to the Commissioner of Insurance at his request and on forms as designated and furnished by him a report of all such coverages so placed in a designated calendar year.

Notwithstanding anything to the contrary herein contained, the rates for the exempt lines of insurance set out in Subsection A (1), (2), (3) and (4) shall not be regulated. (Act 185 of 1970).

§ 1270. Records of insureds

Every person for whom insurance has been placed with an unauthorized insurer pursuant to or in violation of this Part shall, upon the Commissioner of Insurance's order, produce for his examination all policies and other documents evidencing the insurance, and shall disclose to the Commissioner of Insurance the amount of the gross premiums paid or agreed to be paid for the insurance. For each refusal to obey such order, such person shall be liable for a fine of not more than five hundred dollars.

§ 1271. Tonline funds; sales prohibited

A. On and after July 20, 1964, the sale by any in-

MONTANA

40-3425. Rules and regulations. (1) The commissioner shall make or may approve and adopt reasonable rules and regulations, consistent with this surplus line insurance law, for any or all of the following purposes:

(a) Effectuation of such law;

(b) Establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus line insurer or insurers; and

(c) Establishment, procedures, and operations of any voluntary organization of surplus line insurance agents or others designed to assist such agents to comply with such law.

(2) Such rules and regulations shall be subject to the procedures and carry the penalty provided by section 40-2710.

History: En. Sec. 290, Ch. 256, L. 1959.

Collateral References
Insurance 6-8.
44 C.J.S. Insurance § 78.

40-3426. Exemptions from surplus line law. The provisions of this surplus line insurance law controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed insurance agents of this state:

(1) Wet marine and transportation insurances;

(2) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state;

(3) Insurance on property or operations of railroads engaged in interstate commerce; and

(4) Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of such aircraft, or against liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance or use of such aircraft.

History: En. Sec. 291, Ch. 256, L. 1959.

40-3427. Report and tax of independently procured coverages. (1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer, or any self insurer who in this state procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus line agent pursuant to the surplus line insurance law of this state or exempted from such law under section 40-3426, shall within thirty (30) days after the date such insurance was so procured, continued, or renewed, file a written report of the same with the commissioner on forms designated by the commissioner and furnished to such insured upon request. The report shall show the name and address of the insured or insureds, the name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably required by the commissioner. If any such insurance covers also subjects of insurance resident, located or to be performed outside this state a

shall execute and deliver to the superintendent of insurance a bond in the sum of five thousand dollars, payable to the state, with at least two sureties, approved by the superintendent and conditioned that such person will faithfully comply with sections 3905.30 to 3905.35, inclusive, of the Revised Code, and will annually file with the superintendent in January, a sworn statement of the gross premiums charged for insurance procured or placed, and the gross premiums on such insurance canceled under such license during the year ending on the thirty-first day of December last preceding, and at the time of filing such statement will pay to the superintendent an amount equal to five per cent of the balance of such gross premiums after deducting such return premiums so reported. Such tax shall be collected from the insured by the surplus line broker placing such policy of insurance at the time of the delivery of the policy to the insured. No license issued under section 3905.30 of the Revised Code shall be renewed until such reports and tax have been filed and paid in full. The bond required by this section shall be deposited with the superintendent and kept in his office.

HISTORY: GC § 654; RS § 3656-2; 97 v 157, § 2; 103 v 526, § 9; 121 v 407, § 1. 125 v H 1040, § 1. Eff 11-2-53.

See RC § 3905.31 which refers to this section.

§ 3905.36 Tax on unauthorized insurance company business. (GC § 654-1)

All persons, companies, associations, or corporations residing or doing business in this state that enter into any agreements with any insurance company, association, individual, firm, underwriter, or Lloyd, not authorized to do business in this state, whereby said person, company, association, or corporation shall enter into contracts of insurance covering risks within this state, with said unauthorized insurance company, association, individual, firm, underwriter, or Lloyd, for which insurance there is a premium charged or collected, shall, annually on the first day of July or within ten days thereafter, return to the superintendent of insurance a statement under oath of all actual cost of indemnity and gross premiums paid or payable for the twelve months preceding on policies or contracts of insurance taken by the said person, company, association, or corporation and shall at the same time pay to said superintendent a tax of five per cent of the actual cost of indemnity paid or payable to any such association, firm, or individual, or a tax of five per cent of the gross premiums paid or payable to any such insurance company, underwriter, or Lloyd. All taxes collected under this section by the superintendent shall be paid by him, upon the warrant of the auditor of state, into the general revenue fund of the state.

HISTORY: GC § 654-1; 101 v 373, § 1. Eff 10-1-53.

Cross-References to Related Sections

See RC § 3905.37 which refers to this section.
See RC § 3905.38 which refers to RC § 3905.36 et seq.

§ 3905.37 Prohibition. (GC § 664-2)

No person, company, association, or corporation shall fail to make the report required in section 3905.36 of the Revised Code and to furnish all the information that is required by the superintendent of insurance to determine the amount due under said section.

HISTORY: GC § 654-2; 101 v 373, § 2. Eff 10-1-53.

Penalty, RC § 3905.99(C).

§ 3905.38 Exemptions. (GC § 654-3)

Sections 3905.36 to 3905.38, inclusive, of the Revised Code do not extend to private citizens, firms, or corporations, residents of this state, who seek to provide indemnity among themselves, from fire loss or other casualty, by exchange of private contracts for protection only and not for profit. Nor do such sections extend to fraternal beneficiary associations or members thereof.

HISTORY: GC § 654-3; 101 v 373, § 3. Eff 10-1-53.

§ 3905.39 Expiration date of certificates and licenses.

All certificates of authority and licenses of companies, organized or admitted to do business under the laws relating to insurance companies, shall expire on the thirtieth day of June next after they are issued.

HISTORY: GC § 657; RS § 284; S&S 227; 69 v 52, §§ 19, 21; 97 v 455; 116 v 151, § 1. 125 v S 479, § 1. Eff 11-10-53.

§ 3905.40 Prohibition against nonresidents. (GC § 645)

The superintendent of insurance shall issue no license to any person as agent of an insurance company if such person is a resident of a state which, by its laws, prohibits residents of this state from acting as agents of insurance companies in such state; if the superintendent is satisfied that any person holding a license as such agent is a resident of such state, he shall revoke such license.

HISTORY: GC § 645, RS § 287a; 97 v 162. Eff 10-1-53.

Research Aids

License of agent:
Page: Insurance § 41

CASE NOTES

1. Since the penalties which are provided by statute for the act of a foreign insurance company in doing business in Ohio without having complied with the statutes [illegible] such subject, are intended to be the sole punishment for such violation of law, an insurance policy [illegible] by a foreign insurance company which has not complied with the statutes, is valid; and [illegible], one who has paid premiums upon such an insurance policy at the request of the insured, may recover from the in

§ 1119. Exemptions from surplus lines provisions

The sections of this article relative to surplus line coverages shall not apply to reinsurance. L 1957, p. 260, § 1119.

§ 1120. Records of insureds

Upon request of the Insurance Commissioner any person in Oklahoma who is the insured under any policy issued by an unauthorized insurer upon a subject of insurance resident, located, or to be performed in Oklahoma at the time the policy was issued, shall produce for examination all policies and other documents evidencing and relating to the insurance, and shall disclose the amount of the gross premiums paid or agreed to be paid for the insurance, through whom the insurance was procured, and such other information relative to the placing of such insurance as may reasonably be required. L 1957, p. 260, § 1120.

which declares that the business of insurance and every person engaged herein shall be subject to the laws of the several states.

History: L. 1969, ch. 80, § 2.

31-38-3. Transacting insurance business in state without certificate of authority unlawful—Exceptions—What constitutes transaction—Effect of failure to obtain certificate.—(1) It shall be unlawful for any insurer to transact insurance business in this state, as set forth in subsection (2) of this section, without a certificate of authority from the commissioner; provided, however, that this section shall not apply to:

(a) The lawful transaction of surplus lines insurance.

(b) The lawful transaction of reinsurance by insurers.

(c) Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

(d) Transactions in this state involving life insurance, disability insurance or annuities provided to or by education or religious or charitable institutions organized and operated without profit to any private shareholder or individual for the benefit of such institutions and individuals engaged in the service of such institutions.

(e) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.

(f) Transactions in this state involving group life and group sickness and accident or blanket sickness and accident insurance or group annuities where the master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide situs.

(g) Transactions in this state involving any policy of insurance or annuity contract issued prior to the effective date of this act.

(h) Transactions in this state relative to a policy issued or to be issued outside this state involving insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indem-

Added, 1969

nity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.

(i) Transactions pursuant to section 31-15-19, Utah Code Annotated 1953.

(2) Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer is deemed to constitute the transaction of an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurer" as used in this section includes all corporations, associations, partnerships and individuals, engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

(a) The making of or proposing to make, as an insurer, an insurance contract.

(b) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.

(c) The taking or receiving of any application for insurance.

(d) The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof.

(e) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.

(f) Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subsection (2) shall not operate to prohibit full time salaried employees of a corporate insured from acting in the

Added, 1969

capacity of an insurance manager or buyer in placing insurance in behalf of such employer.

(g) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance.

(h) The transacting or proposing to transact any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.

(3) (a) The failure of an insurer transacting insurance business in this state to obtain a certificate of authority shall not impair the validity of any act or contract of such insurer and shall not prevent such insurer from defending any action at law or suit in equity in any court of this state, but no insurer transacting insurance business in this state without a certificate of authority shall be permitted to maintain an action in any court of this state to enforce any right, claim or demand arising out of the transaction of such business until such insurer shall have obtained a certificate of authority.

(b) In the event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract.

History: L. 1969, ch. 80, § 3.

Compiler's Notes.

Chapter 80 of Laws 1969 carried no effective date clause.

31-38-4. Violations—Injunctive relief.—Whenever the commissioner believes, from evidence satisfactory to him, that any insurer is violating or about to violate the provisions of section 31-38-3, the commissioner may, through the attorney general of this state, cause a complaint to be filed in the district court of Salt Lake County to enjoin and restrain such insurer from continuing such violation or engaging therein or doing any act in furtherance thereof. The court shall have jurisdiction of the proceeding and shall have the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper.

History: L. 1969, ch. 80, § 4.

31-38-5. Service of process—Appointment of secretary of state as agent—Method of service—Sufficiency—Default judgment.—(1)

Added, 1969

copies of such legal process either by a person competent to serve a summons, by registered mail or certified mail with return receipt requested. At the time of such service the plaintiff shall pay to the commissioner two dollars, taxable as costs in the action. The commissioner shall forthwith mail the documents of process served, or a true copy thereof, to the person designated by the insurer in the policy for the purpose by prepaid registered mail with return receipt requested. The insurer shall have forty days from the date of service upon the commissioner within which to plead, answer, or otherwise defend the action. Upon service of process upon the commissioner in accordance with this provision, the court shall be deemed to have jurisdiction in personam of the insurer.

(3) An unauthorized insurer issuing such policy shall be deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this section. Any such policy shall contain a provision stating the substance of this section, and designating the person to whom the commissioner shall mail process as provided in subsection (2) of this section. [1963 c 135 § 16; 1955 c 303 § 8; 1947 c 79 § .15.15; Rem. Supp. 1947 § 45.15.15.]

48.15.160 Exemptions from surplus line requirements. (1) The provisions of this chapter controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed agents or brokers of this state:

(a) Ocean marine and foreign trade insurances.

(b) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.

(c) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in scheduled interstate flight, or cargo of such aircraft, or against liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(2) Agents and brokers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this chapter. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state and open to the examination of the commissioner. The agent or broker shall furnish to the commissioner at his request and on forms as designated and furnished by him a report of all such coverages so placed in a designated calendar year. [1949 c 190 § 22; 1947 c 79 § .15.16; Rem. Supp. 1949 § 45.15.16.]

48.15.170 Records of insureds — Inspection. Every person for

HB-299

GREATER ANCHORAGE AREA BOROUGH

104 NORTHERN LIGHTS BOULEVARD
ANCHORAGE, ALASKA 99503

January 26, 1971

OFFICE OF THE CHAIRMAN

The Honorable William Moran
Alaska State House of Representatives
Pouch V, Capitol Building
Juneau, Alaska 99801

Dear Bill:

The Greater Anchorage Area Borough, like most governmental entities, has from time to time need of legislative action to either correct deficiencies in existing laws or to broaden the scope of these laws to enable it to survive with the ever-changing times. Because of this, we depend heavily upon our elected delegates.

This year we are asking each of the delegates to assist. Rather than overload any one of you with a heavy legislative program, we have attempted to divide our legislative package as best we could, hopefully according to your interests.

As a result, you will find a copy of our proposed Vexatious Litigant Bill enclosed. We are asking that you sponsor this Bill in the House. A letter and a copy of this legislation has been sent to Representative Mike Rose asking that he co-sponsor it with you. We have also requested the assistance of Senator Joe Josephson on this particular bill when it reaches the Senate.

If we can provide additional information or testimony, we will be happy to do so.

Very truly yours,

John M. Asplund
Borough Chairman

JMA:vp

encl.

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LEROY BARKER

TELEPHONE
AREA CODE 907
279-7431

24 March 1971

HB-305

Mr. Jalmar Kertulla, Chairman
House Commerce Committee
Juneau, Alaska

Dear Chairman Kertulla and Committee Members:

I have read House Bill No. 305 limiting cancellability of certain insurance policies. I certainly am in favor of legislation in the intention expressed in this Bill.

I think it is also important and that perhaps an amendment should be added providing that where policies show more than one loss payee beneficiary, such as seller and buyer, that notice of cancellation could not be effective unless the 10 day or whatever statutory notice is required is furnished to all of the beneficiaries or loss payees named in the policy and its endorsements.

The reason for this is that numerous people sell their homes under contracts or deeds of trust which require that the buyer carry insurance with the seller also named as loss payee as his interest may appear. If the buyer defaults in payment of the insurance premiums and the insurance company only notifies the buyer of the cancellation, the seller's interest goes unprotected without any notice which would otherwise result in his placing insurance to cover his interests.

We have had numerous occasions where loss has occured in this situation and I feel that it is truly a matter for the attention of the Legislature.

Very truly yours,

Paul F. Robison

PFR/jl

cc: Tom Fink, Representative, Juneau
" Bill Moran, " "
" Mike Rose, " "

HB 305

Division of Insurance

March 18, 1971

HB-305

We have noticed an increasing number of cancellations on property insurance policies for which no valid reason is apparent and for which the individual insured has no protection or recourse for reinstatement. Mid term cancellation for no stated reason places the insured in a "caveat emptor" position. We have received a substantial number of complaints recently, where the insurance carrier has terminated coverage on policies covering low value dwellings. We are sure that many cases like this are never called to our attention. The cases that we have investigated have verified our suspicions that these cancellations are for no other reason. The State of California has adopted this type of legislation and report that it is operating sucessfully.

Last year the legislature passed an automobile cancellation bill which limits the permissable reasons for cancellation of automobile insurance. This is found in AS 21.36 (ch 28 SLA 1970). When the property cancellation problem was realized we drafted a request for legislation to limit property cancellations by amending portions of the automobile cancellation bill thereby eliminating the need to repeat many sections already contained in the automobile cancellation bill. When HB-305 came down it was inserted in AS 21.42. The sections common to the automobile cancellation bill and the non-commercial property cancellation bill have not been picked up. This could be corrected by substituting the bill attached (Exhibit I) for HB-305. We have discussed this with the Deputy Director of Insurance and the Commissioner of the Department of Commerce and have their concurrence.

The common sections in the automobile cancellation bill are indicated in Exhibit II.

This proposed legislation will; give the buyer a reason for any cancellation of coverage, limit valid reasons for cancellation to 5 classes, provide a 45 day notice of non-renewal and a 20 day notice of cancellation except on non-payment cases which will provide a 10 day notice of cancellation. The present notice provides only 5 days for fire policies. There is a definite need for the additional protection this bill would afford the insuring public.

This legislation may have an adverse effect on markets for the types of lines to be covered as carriers may feel that they have to withdraw. The bill covering automobiles cancellation has not apparently affected our markets. We really do not expect any withdrawal problems but some are possible.

EXHIBIT I

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An act relating to the cancellation and renewal of certain non-commercial insurance policies other than automobile."

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

*Section 1. AS 21.36.210 is amended by adding new subsections (e) and (f) to read:

(e) No insurer may exercise its right to cancel an insurance policy covering;

(1) Loss of or damage to real property which is used predominantly for residential purposes, and which consists of not more than four dwelling units.

(2) Loss of or damage to personal property in which natural persons resident in specifically described real property of the kind described in subdivision (1) have an insurable interest except personal property used in the conduct of a commercial or industrial enterprise.

(3) Legal liability of a natural person or persons for loss of, damage to, or injury to, persons or property but not including policies primarily insuring risks arising from the conduct

of a commercial or industrial enterprise

Except for reasons listed in (f) of this section.

(f) Exceptions to (e) of this section are:

(1) Nonpayment of premium, including nonpayment of any additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a chnage in its occupancy for use.

(2) Conviction of the named insured of a crime having as one of its necessary elements an act increasing any hazard insured against.

(3) Discovery of fraud or material misrepresentation by either of the following:

(A) The insured or his representative in obtaining the insurance.

(B) The named insured in pursuing a claim under the policy.

(4) Discovery of grossly negligent acts or omissions by the insured substantially increasing any of the hazards insured against.

(5) Physical changes in the insured property which result in the property becoming uninsurable

*Section 2. AS 21.36.270 is amended to read:

Sec. 21.36.270 EFFECT OF FAILURE TO COMPLY. Notwithstanding the failure of an insurer to comply with secs 210 - 310 of this chapter termination of coverage under the policy either by cancellation or non-renewal is effective on the effective date of any other policy providing similar coverage on the same [motor vehicle or a replacement of it.] (1) risk, or (2) motor vehicle or a replacement of it.

*Section 3 AS 21.36.210 (1) is amended to read:

Sec 21.36.310 DEFINITIONS. In secs. 210 -300 of this chapter

(1) "Policy" means a policy covering the exposures listed in 210 (e) of this section or an automobile policy which includes automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage, or automobile physical damage coverage, delivered or issued for delivery in this state, insuring as the named insured, one individual or husband and wife resident of the same household, and under which the insured vehicles are of the following types only:

(A) a motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance, nor rented to others; or

(B) any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less which is not used in the occupation, profession or business of the insured, nor used as a public or livery conveyance nor rented to others;

*Section 4. This act takes effect July 1, 1971.

EXHIBIT II

LAWS OF ALASKA

1970

Source: HCSSB 311

Chapter No. 28

AN ACT

Relating to the cancellation and renewal of certain automobile insurance policies.

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

* Section 1. AS 21.36 is amended by adding new sections to read:

Sec. 21.36.210. LIMITS ON CANCELLATION. (a) No insurer may exercise its right to cancel an automobile insurance policy except for the following reasons:

(1) nonpayment of premium; or

(2) the driver's license or motor vehicle registration of either the named insured or of an operator who resides in the same household as the named insured or who customarily operates a motor vehicle insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

(b) During the policy period, no modification of automobile physical damage coverage (except coverage for loss caused by collision) whereby provision is made for the application of a deductible amount not exceeding $100 is a cancellation of the coverage or of the policy.

(c) Renewal of a policy does not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of the renewal.

(d) This section does not apply to the failure to renew a policy, except as to coverage in force for less than 12 months.

Sec. 21.36.220. NOTICE OF CANCELLATION. No insurer may exercise its right to cancel a policy unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days before the effective date of cancellation, except that when cancellation is for nonpayment of premium the notice shall be mailed or delivered to the named insured at the address shown in the policy at least 10 days before the effective date of cancellation and shall include or be accompanied by a statement of the reason for the cancellation. This section does not apply to the failure to renew a policy, except as to coverage in force for less than 12 months.

Sec. 21.36.230. STATEMENT OF REASONS. A notice of cancellation issued under sec. 210(a)(2) of this chapter shall either state the reasons for the cancellation, or contain a statement that upon the written request of the named insured, mailed or delivered to the insurer at least 10 days before the effective date of cancellation, the insurer will specify in writing the reason for the cancellation. If the reason for cancellation is not included in the notice of cancellation, the insurer shall upon written request of the named insured specify in writing the reason for cancellation. The insurer shall mail or deliver this explanation to the named insured within 10 days after receipt of a written request. Failure to specify the reason following a request constitutes a violation of this title, but does not invalidate the cancellation.

Sec. 21.36.240. FAILURE TO RENEW. No insurer may fail to renew a policy in force for less than 12 months. No insurer may fail to renew a policy in force for 12 months or more unless a written notice of nonrenewal is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days before the expiration date of the policy, or of the anniversary date of a policy written for a term longer than one year or with no fixed expiration date. This section does not apply

(1) if the insurer has in good faith manifested in any way its willingness to renew;

(2) in case of nonpayment of premium for the expiring policy; or

(3) if the insured fails to pay the premium as required by the insurer for renewal.

Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automobile liability insurance is cancelled, other than for nonpayment of premium, or for failure to renew a policy of automobile liability insurance to which sec. 240 of this chapter applies, the insurer shall notify the named insured of his possible eligibility for automobile insurance through the automobile assigned risk plan, or automobile insurance plan. The notification shall accompany or be included in the notice of cancellation or nonrenewal required by secs. 230 and 240 of this chapter.

Sec. 21.36.260. PROOF OF MAILING. Proof of mailing of notice of cancellation, or of nonrenewal or of reasons for cancellation, to the named insured at the address

shown in the policy, is sufficient proof of notice.

Sec. 21.36.270. EFFECT OF FAILURE TO COMPLY. Notwithstanding the failure of an insurer to comply with secs. 210 - 310 of this chapter, termination of coverage under the policy either by cancellation or nonrenewal is effective on the effective date of any other policy providing similar coverage on the same motor vehicle or a replacement of it.

Sec. 21.36.280. IMMUNITY OF INSURER, DIRECTOR AND INFORMER. There is no liability on the part of, and no cause of action of any nature may arise against, the director of insurance or against an insurer, its authorized representatives, agents, or employees, or a person furnishing to the insurer information as to reasons for cancellation, for any statement made by any of them in a written notice of cancellation, or in any other communication, oral or written, specifying the reasons for cancellation, or the providing of information pertaining to a cancellation or for statements made or evidence submitted at a hearing conducted in connection with a cancellation. However, this immunity from liability does not apply when the information furnished or statement made is untrue and the person furnishing the information or making the statement knew of the lack of truth or was grossly negligent in ascertaining the truth.

Sec. 21.36.290. POLICY PERIOD. A policy with a policy period or term of less than 12 months shall, for the purposes of secs. 210 - 310 of this chapter be considered to be written for a policy period or term of 12 months except in case of cancellation under any of the circumstances specified in sec. 210 of this chapter, and a policy written for a term longer than one year or a policy with no fixed expiration date shall be considered to be written for successive policy periods or terms of one year and termination by an insurer effective on an anniversary date of the policy shall be considered a failure to renew.

Sec. 21.36.300. APPLICABILITY OF SECS. 210 - 310 OF THIS CHAPTER. Secs. 210 - 310 of this chapter do not apply to any

(1) policy which has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy;

(2) policy issued under an automobile assigned risk plan or automobile insurance plan;

(3) policy insuring more than four motor vehicles;

(4) policy covering the operation of a garage, automobile sales agency, repair shop, service station or public parking place;

(5) policy providing insurance only on an excess basis; or

(6) other contract providing insurance to the

named insured even though the contract may incidentally provide insurance with respect to motor vehicles.

Sec. 21.36.310. DEFINITIONS. In secs. 210 - 310 of this chapter

(1) "policy" means an automobile policy which includes automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage, or automobile physical damage coverage, delivered or issued for delivery in this state, insuring as the named insured, one individual or husband and wife resident of the same household, and under which the insured vehicles are of the following types only:

(A) a motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance, nor rented to others; or

(B) any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less which is not used in the occupation, profession or business of the insured, nor used as a public or livery conveyance nor rented to others;

(2) "renewal" or "to renew" means

(A) the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer,

(B) the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term, or

(C) the extension of the term of a policy beyond its policy period or term under a provision for extending the policy by payment of a continuation premium;

(3) "nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premium on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

Approved by governor: March 20, 1970
Actual effective date: June 18, 1970

REP. WILLIAM J. MORAN
P. O. BOX 1891
ANCHORAGE, ALASKA 99501

The Full-system Mass Transit Concept for The Small City

Re: HB 334 and HB 335

Mass transportation problems in the large cities stand out, in part at least, due to their very magnitude, and they are receiving some badly needed attention on both the local and national level. Smaller cities (100,000 or less) are also having serious mass transit difficulties, however, and there is not the same degree of concern shown about them. This proposes the "Full-system Concept" for a small city and outlines a method which could be followed in meeting public transportation needs, and help guarantee the best possible transit management, as well as full value for the money spent.

By GEORGE M. SMERK

In the past decade there has been considerable concern shown in improving mass transportation as one means of providing relief from clogged streets and increasing the mobility of urban residents. Much of this interest has been generated by the aid programs introduced by the federal government in 1961. Any efforts made in this direction are commendable after years of neglect by all levels of government. Nevertheless, little attention has been paid to the problems of mass transit in small cities—those of 100,000 population or less.

The crying need for mass transportation in large cities is so obvious that there can be no doubt that it is vital to the public interest and necessary to the functioning of the urban area. As a result, however morbid some big-city systems may be, whatever the degree of decay found in equipment and operating practices, it is obvious that the systems will somehow continue to run—even if it means ownership and operation by the city government or some other public agency. Indeed, in recent years—thanks in a large part to the federal programs and some state aid, coupled with expenditure of local funds—there have even been small but often significant improvements in mass transportation in larger cities.

On the other hand, in many cities below 100,000 in population, mass transportation is fast withering away.[1] Perhaps somewhat surprisingly, there has been remarkably little concern shown. In large part, this is because the need for transit and the problems faced when it is lacking are not as obvious and clear-cut in a small city as in a large one. Local political and community leaders usually do not have the staff resources or expertise available to help them worry about mass transport problems in addition to all the other affairs they must deal with. At the same time, there has rarely been a strong, unified, public outcry for continuation, resuscitation, or improvement of public transport in small cities. The groups which stand most to benefit—the poor, the aged, the infirm, and the young—in other words, those who most often do

[1] See, for example, Urban Mass Transportation—1962, Hearings before a Subcommittee of the Committee on Banking and Currency, United States Senate, 87th Congress, 2d Session, April 24-27, 1962 (Washington, D. C., U. S. Government Printing Office, 1962), pp. 380-390.

not have easy access to and use of an automobile—have little to bind them together into a unified, socioeconomic, or sociopolitical group.

Similarities and Differences in Small- and Large-city Transit Enterprise

ALL mass transportation enterprises, regardless of the scale involved or the size of a city in which it is located, face certain similar problems. One of the most serious of these is the competition of the automobile, which has attracted much of the total traffic and has siphoned away off-peak traffic in particular. Paradoxically, mass transit still enjoys relatively heavy peak-hour traffic. Unfortunately, resources used only in the few peak hours are a burden that must be supported throughout the off-peak times. Revenue from the peaks—heavy though it may be—is liable to be severely strained in order to support both peak and off-peak costs. The peaked demand pattern is a prime cause of the shaky financial condition of the transit industry.

The relative indifference of local government to the problems of the transit industry is another difficulty common to transit firms of all sizes. Transit operations are often carried on today under burdensome procedures and regulations designed to help thwart the transit monopoly of sixty years ago. There may be, for example, substantial difficulties faced in gaining approval of route modifications to meet changing needs. Indifference can also be found in other forms; even so simple a thing as failure of police to enforce "no parking" ordinances at bus stops can greatly hinder efficient operations.

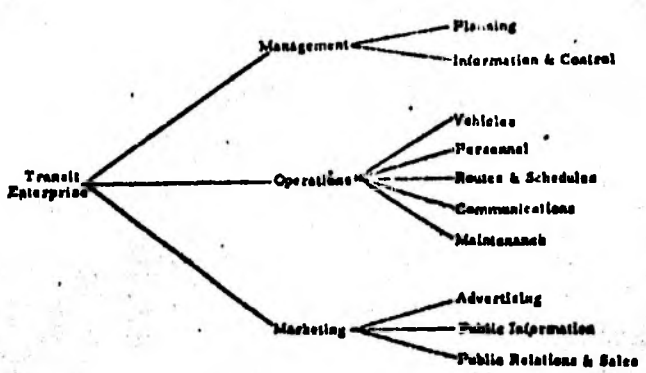
Another common problem area is transit management itself. In most cases it can best be classified as operations-oriented, management-by-reaction. Even a small transit enterprise in a small city can involve considerable complexity in operations, particularly in the scheduling of manpower and the use and maintenance of equipment. Management, usually risen from the ranks, has therefore tended to concentrate its attention on production of the service rather than marketing of the product. As a result, revenue and profit difficulties are generally not viewed as a marketing problem. The reactions to falling revenues are usually service cuts and fare increases which lead almost inevitably to a further decline in patronage.

OBVIOUSLY, there is little the transit industry or the individual firm can do about the automobile and the changes it has wrought in the patterns of demand. Furthermore, changes in the attitude of all levels of government are at present in a state of evolution but there will probably be a slow but steady increase in co-operation and aid. Therefore, in reviewing alternatives, the most feasible area for the fairly rapid relief of problems is in transit management itself.

In the large city, the major constraints imposed by the environment are the scale of the enterprise—assuming realistically that there is but one major operator—and the relatively high degree of dependence of the public upon mass transportation. The larger the scale of operation, the greater the degree of complexity and the greater the need and opportunity for managerial specialization. Large-scale enterprises need, and can justify, the purchase and use of experience, consultants, and data processing devices. Moreover, large-scale enterprise is most likely to lead to generally impersonal relations between transit management and rank-and-file personnel, and between the transit firm and the general public. Furthermore, with increasing

FIGURE I

RELATIONSHIP OF THE ELEMENTS OF THE FULL-SYSTEM MASS TRANSIT CONCEPT



public dependence upon mass transport, the greater is the need to gear plant, personnel, and equipment to match peak demands.[2] As a result, except for the peak twenty hours a week, most large-city transit firms are burdened with considerable overcapacity.

On the other hand, in small-scale, small-city operations, platoons of managerial specialists are neither possible nor necessary. Capital intensive use of exotic hardware is likewise unjustifiable. However, a close relationship is possible between supervisory and managerial personnel and the operating employees; the small-city enterprise may also have a more personal relationship with the people it serves and with city government, if care is taken to cultivate both relationships. Moreover, a lesser relative degree of public dependence upon the transit system, and the high probability of more moderate demand peaks, means that the degree of overcapacity required in a large-city system is not needed in the small city.

Small-city Mass Transit: The Dangers of the Conventional Wisdom

Unfortunately, in years past as well as today, most research and writing in transit has been aimed at big-city problems and big-city situations. Much of this transit thinking is misplaced in the case of small cities; much of it is out of date—the product of the first quarter of this century. As a result, operational concepts and management attitudes in the transit industry as a whole are geared to the conventional wisdom most appropriate to big cities in the age of the streetcar.

One of the most obvious practices of conventional thinking is the "Main Street" operating pattern. Because of the expense of construction of street railway lines, it was unwise, unless population was extraordinarily dense, to place rail facilities too close together. Using the rough rule of thumb that the reasonable service area on either side of a streetcar line was approximately a quarter of a mile, the routes were laid out in a coarse-grained pattern, approximately one-half mile apart. As a result, the streetcars usually did not penetrate the actual residential areas very deeply.

Another reason for lack of fine-grained coverage was the fact that the streetcar, particularly before the introduction of the PCC car in the mid-1930's, was relatively obnoxious. Because of noise serious objections would have been raised had more intense penetration been attempted. The "streetcar street" was not itself a choice residential location.

Today, even though the bus has generally replaced the streetcar, the buses often tend to follow the old routes with an almost religious devotion, despite rapidly changing population, employment, and shopping patterns. Where new bus lines have been established, they still tend to follow the main streets almost exclusively.[3] The difficulty is very simply this: If mass transportation is to serve the public adequately, if it is to be an effective competitor to the automobile, the public must have easy access to service that can be provided by fine-grained routing.

The typical size of the vehicles used in mass transport service is another heritage of streetcar days. In days prior to automotive competition, streetcars were justifiably large because demand was usually relatively high and fairly steady throughout the day, and the capacity and large size of the vehicle could be easily justified. Subsequently, large streetcars were replaced with large buses.

Today this practice is usually justified on the grounds that it is cheaper to pay one man to drive one large bus than to pay two men to drive two smaller vehicles, and, of course, the capacity of the vehicle *is* warranted during the hours of peak demand. There may be wisdom in this thinking in big-city systems. Because of competition in the labor market with manufacturing industry, which finds it easier to use capital to boost worker productivity, bus drivers must be paid wages competitive with those of industrial workers. A larger vehicle under one man's control is one way in which productivity can be increased, at least when there is traffic available to be moved.

In small-city operations, the relatively large size of even the smallest standard transit vehicle—a 35-passenger model—is a major cross to bear. Patronage may rarely fill them up, even during rush hours. The relatively high cost of such vehicles when new—approximately $15,000 for a 35-passenger bus in operating condition—and the

[2] One sign of gearing up for the peak can be found in the increased buying large, relatively high-capacity buses over the past twenty years. The great majority of vehicles purchased recently seat from forty-five to fifty-three persons. The "standard" bus seats thirty-five. Most of the capacity of these is greatly underutilized except during peak hours.

[3] Poor planning of new subdivisions and so-called "communities" makes it virtually impossible, in many cases, to serve them effectively and efficiently with mass transportation. City fathers, developers, and planners, insensitive to transport requirements, must share the considerable blame involved.

burdens of depreciation and operating costs make them most inappropriate equipment to use in low total and low peak demand situations. Again, the cumbersome size of the bus and the noise associated with them may make them rather unwelcome in residential neighborhoods.

In a production-oriented industry, the conventional wisdom calls for shaving cost whenever and wherever possible. In the small city this leads to combining routes, often ballooning them into large one-way loops or zigzagging back and forth to permit one line to cover the territory once served by two or more. In either case, such routing leads to excessive circuity and inconvenience for many patrons or potential users. The drive to cut costs also leads to extending the headway of a route to perhaps sixty to ninety minutes in order to permit as few vehicles as possible to cover maximum route mileage.

Furthermore, the cost-cutting syndrome usually means that many practices considered highly important in most businesses are dismissed as mere frills. Public information material, such as maps and schedules, if available at all, are usually unattractive and difficult to read. Advertising of the service is usually nonexistent. Any sort of fact gathering that threatens to be costly, regardless of its value to management, is often dropped. Lack of marketing orientation at its worst may have prevented the transit enterprise from understanding and expanding its operations to meet new potential demands in developing suburban areas.

In short, because the conventional wisdom is the child of production-oriented, big-city transit thinking, small-city transit operations may typically consist of a few routes, operated on infrequent headways by excessively large equipment on a broad-grained pattern that neither reaches nor conveniently serves the bulk of the population—which in any case is poorly informed about what service *is* available. Small wonder small-city mass transportation is in trouble.

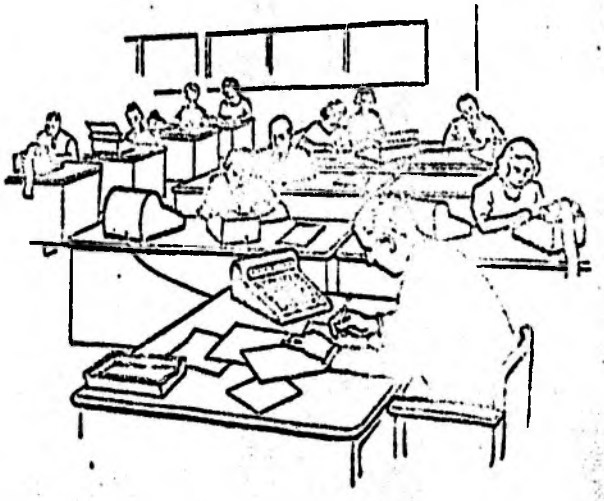
Management is the key to the survival and improvement of small-city mass transit, regardless of whether the enterprise is publicly or privately owned, subsidized to provide service, or expected to produce a return on investment. But the industry suffers from a lack of professional managers and it will be many years before federal programs to educate persons for transit management have produced a reasonable supply of trained transit managers. Probably most of these will be attracted to bigger cities. What is needed, therefore, is a concept—a star to steer by—that can help guide the small-scale transit enterprise. Just such a method of guidance is the Full-system Mass Transit Concept.

Full-system Mass Transit: The Unconventional Wisdom

In a small city in which the Full-system Concept is in operation, the visitor would have some sights to catch his eye unlike most cities of similar size. At the center of town he would discover an attractive transfer house. From time to time, in a regular pattern throughout the day, a flock of small, cheerfully painted buses would descend upon this facility and there would be the hustle and bustle of people boarding, alighting, and departing.

Wherever the visitor might take himself in the city, he would soon be bound to find one of the ubiquitous buses moving along its route. They would bear the tell-tale antennae indicating that they were radio-equipped; on the roof would be the unmistakable sign of an air-conditioning unit. Occasionally he would come across shelter houses and small, modern terminal houses at outlying shopping and work centers. At certain key places would be posted large information tablets containing maps and schedule information.

Behind the scenes would be the careful maintenance program that ensured the availability of the surprisingly small number of vehicles that performed the service, and the system of data gathering that gave the tiny management team the information needed for effective control of the operations of the system. Less modest, perhaps, would be the marketing effort, visible in the form of arresting advertisements regularly placed in the local papers, and audible



through the local radio station. Perhaps the most notable feature of all would be the fact that townspeople from all walks of life would swear by—not at—their public transit system. Moreover, because it was a useful, integral part of their community, they would use it in large numbers.

Such a picture is not pie-in-the-sky; it requires only some important changes in approach.

The Philosophy of Full-system Mass Transit

THE essence of the concept is the idea of system. Webster defines a system as "a regularly interacting or interdependent group of items forming a unified whole."[4] Despite the formidable prose of the definition, the notion is simple and straightforward. Moreover, it is obvious that urban transit abounds in system relationships. A city itself is a system, and transit is part of the circulatory subsystem that helps bind it together.

Within the transit enterprise itself, the systematic approach is crucial. For example, the kind of vehicle used can determine what sort of persons may drive them, where they may be driven, and the cost of the service that is supplied. Schedules and routes must be geared to public need and the operating capabilities of equipment; maintenance and communications are needed to insure reliable, on-time service. The neglect of system relationships obviously makes it difficult or impossible to achieve desired goals effectively and efficiently.

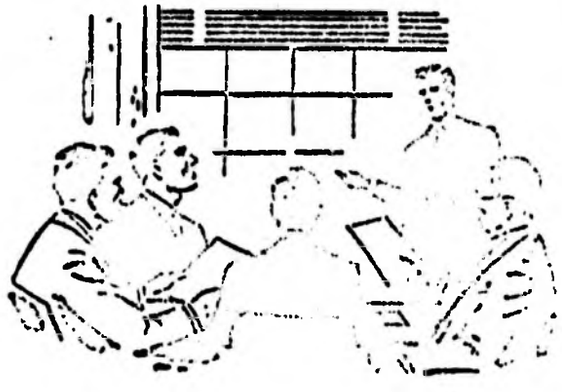
Moreover, the concept as set out here is very simple. In keeping with the scale of the enterprise. A vast and complex business or enterprise must obviously engage in systems approaches on a par with the magnitude of the effort. Batteries of engineers, scientists, and managers are needed to fit a rocket into space. Even though the basic concept remains the same, the scale of small-city transit operation makes large numbers of technicians and expensive computing hardware unnecessary; success lies more with the attitude of management.

The major guideline of the Full-system Concept is that of optimizing the results of the operations of the entire enterprise in moving toward goals. This may very well mean suboptimization—that is, increasing the cost—of some pieces of the system in order to achieve maximum total service quality—and revenues for private enterprise systems—at a reasonable cost. In other words, it means avoiding attempts to cut costs or improve performance in any one activity without regard to the impact of such cost cutting on all other activities and on the overall profitability and/or effectiveness of the enterprise. An analogy can be found in the physical distribution management concept currently attracting considerable attention in the business world. The old-fashioned traffic manager, viewing only the transportation element of a system, would buy the least costly freight service that met the firm's transportation needs, regardless of its effect on inventories, warehousing costs, packaging costs, etc.

The physical distribution manager, on the other hand, may ship by relatively expensive air freight in order to reduce packaging, warehousing, and inventory cost, if by so doing he reduces the total costs of distribution of product. By viewing all elements of the distribution system, the physical distribution manager can do a more efficient job than can the traffic manager.

SEVERAL important guidelines must be observed in carrying through the Full-system Concept. First of all, the service offered by the transit firm must be of sufficiently high quality to offer a reasonable transportation alternative to all residents. Mass transportation must overcome its reputation of abominable service performed in Coolidge-era trappings. The quality factors at issue are convenience, as reflected by fine-grained coverage of the city, schedules rigorously maintained, vehicles that are comfortable, and personnel that are courteous and well-trained. It is not enough to produce a service of such low quality that only those persons with no transport alternative whatsoever would possibly consider using it.

The second guideline is the reduction of costs to a minimum, given the quality standards that are to be maintained. The principal means of achieving minimum cost performance is to tailor plant and equipment to meet the needs of the service, and to



[4] Webster's Seventh New Collegiate Dictionary, Springfield, Massachusetts, G. and C. Merriam Company, 1965, p. 895.

George M. Smerk is professor of transportation at Indiana University, as well as the director of the Institute for Urban Transportation. He received a BA ('55) degree in business administration and his MBA ('57) at Bradley University. He earned his DBA at Indiana ('63) and then served as assistant professor of transportation at Maryland University until 1966. Mr. Smerk is the author of *"Urban Transportation: the Federal Role"* (1965) and *"Readings in Urban Transportation"* (1968), both published by Indiana University Press.

make intensive use of these assets. A systematically conceived and operated transit enterprise should be able to avoid much idle capital. The nature of small-city demand should afford this opportunity.

The final guideline is that of the long-range approach to the eventual achievement of specific goals. Regardless of whether the objective of the enterprise is a given level of profitability, minimization of loss, or a certain level of ridership, many years of careful cultivation of the market may be necessary to achieve objectives.[5] Plans should be carefully laid, so that with proper attention paid to establishment of interim targets of revenues and costs, and an effective system of controls, the desired results will be achieved. Full-system mass transit should be considered in the same light as any new product offered to the public; essentially, the success of the concept involves a critical change in the habits of consumers of transport and such changes do not come quickly.

A FURTHER word about goals is necessary. A privately owned transit enterprise is expected to turn a reasonable profit. Publicly owned transit enterprise may be expected to do no more than break even; often the goal is to produce some level of service at minimum cost, and it is assumed that the service will be perpetually subsidized. Decisions on pricing reflect the goal. Regardless of ownership, the profit goal is a powerful stimulus to efficient operations that meet public needs. Transit, however, in its preoccupation with operations and neglect of marketing, has generally fallen woefully short of doing a businesslike job of producing either profits or good transit service. Because of the discipline afforded by profit goals—and the requirement that shrewd management be concerned with both production and marketing—it seems wise that even a publicly owned enterprise should attempt to meet its service goals and eventually produce a surplus, over and above covering all its costs, depreciation, and necessary provisions for expansion.

[5] A good example is RCA's introduction of color TV. Even after a method of successfully transmitting and receiving color television was developed, years of effort were required to build the market. This included a substantial offering of color shows on NBC-TV to make the purchase of a color set worth-while to the consumer, who probably already owned a good black and white set. Few new products are financial successes from the beginning; it is extremley shortsighted to expect them to be.

The Subfunctions and Form of Full-system Mass Transit

IN the Full-system Concept, the transit enterprise is viewed as an interrelated group of activities or subfunctions—such as maintenance, or routing and scheduling—all bearing on the main function of transit service. For purpose of discussion, the subfunctions may be most conveniently bundled together in major categories of management, operations, and marketing. Figure I (page 27) shows the relationship.

Management

THE major function of management is to control the successful operation of the enterprise by careful integration of the interrelated parts. In essence, managerial activities consist of manipulating the various subfunctions of operations and marketing—including pricing—to reach the targets established for service, revenue, cost, and profit (or surplus). This approach is, therefore, in direct opposition to the "management by reaction" as practiced in mass transit today.

In order to play its role successfully, the management function must involve itself with the interrelated subfunctions of planning, and information and control systems. The breakdown of effort

into these areas does not, of course, mean that a large staff is necessary, only that the tasks of management are clearly categorized.

Planning. The subfunction of planning must have as its objective the establishment of specific goals within the structure of the enterprise, including both long- and short-range targets. A major job handled within this subfunction would be the analysis of proposed alterations and changes in service or marketing effort. For example, in consideration of the expansion of service through the operation of a new line, the planning area would determine the probable cost, the potential market, the marketing and other effort needed to implement the change, the patronage, and revenue targets to be reached over time and the effect of the change on the enterprise as a whole.

Information and control systems. Much of the work of the planning subfunction would depend upon the information and control systems subfunction. This area would have as its job the establishment and maintenance of an accounting and cost control system providing information useful and necessary in the management of the enterprise.

Cost control systems must be devised that provide required detail at reasonable cost. Management should know, for example, not only the cost, revenue, and patronage of each route, but also, if possible, have such information available for each trip. Even the boarding and alighting locations of patrons on each trip would be useful in noting the patterns of transit usage, along with information on actual origins and destinations of patrons.

Operation

THE operations function involves all those areas related to the actual production of the transit service. These include vehicles, personnel, routes and schedules, communications, and maintenance.

Vehicles. The vehicle subfunction is a critical one in mass transit, and—as has been pointed out in earlier pages—one of the major problems in the small-city environment. The size and capacity of the vehicles used, their initial cost and cost of operation and maintenance, their ability to penetrate residential areas without offense, their dependability, attractiveness, and comfort, are all factors closely related to the success of the whole venture and affect the other subfunctions intimately.

A major guideline in regard to vehicles and their selection is that the equipment used must meet both the conditions of demand and the operating conditions of the given environment. As an example, where demand is relatively light and streets narrow, with sharp corners to turn, a small bus—probably smaller than today's most modest-sized standard vehicle—would be best. On the other hand, where demand is quite heavy, a large bus is needed. If operating conditions are such that a standard transit bus is too long to navigate tight corners, then short-length, high-capacity, double-deck buses are just the ticket. The advantages of utilizing one standard type of equipment have to be weighed against possessing a variety of equipment that permits substantial flexibility in operations and higher quality service in terms of penetration and sprightly running.[6]

As pointed out earlier, a major guideline of the Full-system Concept visualizes a fine-grained operation that makes maximum use of assets. This is translatable into a fairly large number of routes, closely spaced, with fair frequency of schedules. In a small city, as defined in this article, demand is not likely to be excessively high, even at the peak, and closely spaced routes should tend to distribute the traffic rather evenly among the routes.

Regardless of seating capacity (10 to 20 presumably), the buses should be air-conditioned, have a pleasant, easy-to-clean interior, comfortable seats and springing, and be dependable. These features, plus an attractive exterior paint scheme, should make for a most beguiling bus, with a $5,000 to $12,000 price range.

Despite the aim of relatively modest cost, the vehicles should be written off as soon as possible so that they can be replaced frequently. No piece of rolling stock should be kept for more than ten years, and retention for no more than five years would be better.

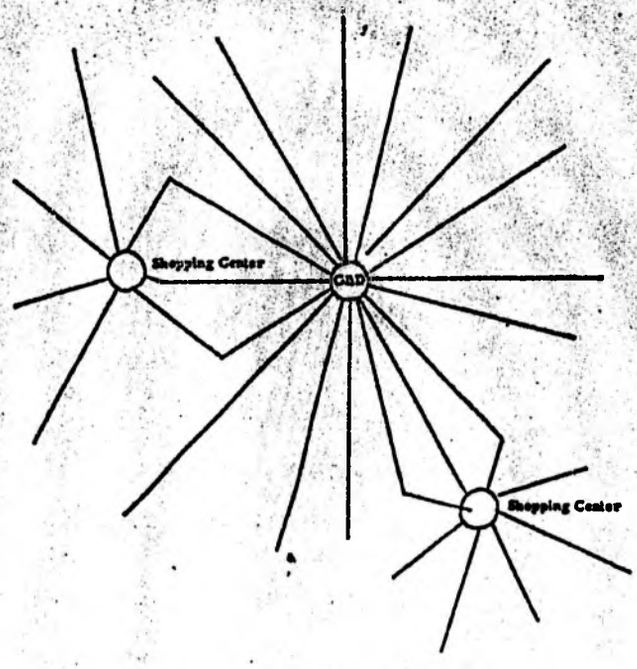
Small buses will be able to run on any residential street without needless noise and disturbance to residents; the goal of a service that successfully penetrates residential neighborhoods without offense can be realized. Wear and tear on the streets should be not much greater than that imposed by automobiles.

Moreover, the superior maneuverability of a small vehicle will enable it to maneuver its way through streams of vehicles quite easily, rather than

[6] The small bus is obviously no cure-all to small-city transit problems and the comments on such equipment are not intended to give that impression. For some highly informative comments on this point, see *"Mass Transportation in a Small City,"* The New Castle Area Transit Authority, New Castle, Pennsylvania, fall, 1968, especially pp. 9 and 29.

FIGURE II

DIAGRAMMATIC VIEW OF FULL-SYSTEM MASS TRANSIT CONCEPT ROUTING



wallowing in traffic as its big brothers are forced to do.[7]

PERSONNEL. The driver is clearly a key factor in the successful operation of mass transit service. His selection and training are not matters to be taken lightly. He is the one who meets the public and his courtesy and skill in dealing with people clearly do much to make the difference between success and failure in the undertaking.[8] Since a basic part of the Full-system Concept for small cities depends upon the use of small vehicles, the association between driver and passengers is likely to be physically close. This offers an unusual opportunity to create a close and friendly relationship between the transit enterprise and the public it serves through the medium of the driver.

All of this means that the driver must be a paragon of all those virtues which bus drivers are supposed to possess in terms of driving ability, politeness, neatness, etc. But not just anyone who can drive well—an erstwhile truck driver, for instance, will do. The driver's potential as a friendly representative of the transit enterprise is a key factor in making a ride on the bus a pleasure for patrons. He must be carefully selected and trained for the job.

Beyond a driver's role in meeting the public, skillfulness in actually handling a vehicle can result in substantial economies in operation. Carefully kept records of operating and maintenance cost, assigned to each driver as well as to each vehicle, will permit management to pinpoint inefficient drivers and take the retraining steps needed to weed out "expensive" driving habits. Moreover, as the vehicles to be used will generally be small, it will be possible to utilize women drivers, since the muscle needed to handle a large standard transit bus will be unnecessary.

ROUTES AND SCHEDULES. The routes and schedules subfunction involves the laying out of routes and the scheduling of revenue service. The routing objective of a fine-grained service can be met by planning routes that are relatively close together so that patrons will have no more than two or three blocks to walk in order to reach public transportation. To afford maximum coverage and utility, careful consideration must be given to providing service to all places of employment, shopping, personal service, recreation, schooling, and medical care, as well as residential areas. All are sources

[7] Unfortunately, as many readers are probably thinking, such an ideal vehicle does not exist. The MiniBus and Flxette, to name several small buses currently available on the market, are a bit larger and more expensive than desirable. A small bus slightly larger than the Ford Econoline, or Volkswagen Microbus, would be about right. There is an obvious vehicular need here that remains to be met in a really satisfactory manner.

[8] For some interesting information on the importance of the driver to the public, see "*A Consumer Report*," New York: The Transit Advertising Association, Inc., undated, p. 5.

of potential patronage and, within reason, none should be left untapped or unserved.

It is obviously impossible to claim that a city has real full-system mass transportation service without covering the whole of the city with mass transit in the fine-grained pattern. It is equally impossible to plan a route that connects every possible origin and destination point that its patrons may desire. The routes must, therefore, converge on one or more major transfer points to permit easy interchange. By bringing all routes to focus, patrons are given considerable flexibility and access to the whole of the city is given to the transit patron.

The central business district is the most likely site of the principal transfer house. This should also be the location of the central operating control point. Routes should radiate from the transfer house, the actual pattern determined by the street layout and the distribution of population and economic activity. Some will converge on other major foci in the urban areas, such as principal suburban shopping centers or factories. From these subcenters additional routes may radiate into suburban communities. Figure II (page 33) gives an idealized, diagrammatic view of Full-system Concept routing.

To ease transfer, the major exchange facilities should be, in effect, small terminals. Patrons must not be forced to dash madly—and at considerable personal risk and inconvenience—from corner to corner. All buses must pull up next to one another at the transfer house, and shelter from the elements should be provided to make transferring as pleasant as possible. The close proximity of the buses to one another will add to the painlessness of the process.

The matter of schedules is often a vexing one. This is especially true in the small city where demand will never be adequate to make it economically feasible to offer service on such frequent headways that the given time certain points are served is of small consequence. Schedules should also be easy for the public (and supervisory and operating personnel, as well) to remember. In small cities in the lower end of the size range, service more frequent than every thirty minutes can probably not be justified. Each route should therefore be tailored so that it can be served, out and back to the central transfer house, in a period of slightly less than thirty minutes. To ease transfer and schedule memorization, all buses should be scheduled to leave the transfer house at the same time (on the hour or half-hour).

In operation, therefore, the Full-system Concept transit enterprise will present a picture of regular ebb and flow. Remembering such a schedule will place little strain on the public and eliminate the confusion and frustration of spasmodic or seemingly capricious scheduling. If demand on a route presses too heavily upon the capacity of given vehicles at certain peak times, it would probably be best to run two smaller buses in tandem—or substitute larger vehicles customarily used in charter or other special services—rather than violate the schedule pattern.

The period of service throughout the day will, of course, depend upon the span of travel demand. Because the great majority of trips will be connected with work, school, and shopping, it is obviously unnecessary to operate beyond those periods. Initially, the period of operation should be from about 6:00 A.M. to 7:00 P.M. Since the whole approach to the Full-system Concept must be positive—that is, a constantly growing and improving service rather than one of constant cutbacks—it would be best to start off on the conservative side and add to the service period as the need proves itself.

The first task of management under the Full-system Concept is to provide a reliable, regularly scheduled and routed service. Once this is established, careful investigation of the market should provide insight into the operation of charter and special services.

An aggressively marketed charter service can be profitable to the transit enterprise and a boon to the community. Special subscription or dial-a-bus plans, providing door-to-door service under special fare and contractual agreements, and special school bus services, should also be well-researched

and evaluated and phased in as the need for them becomes clear.

COMMUNICATIONS. Perhaps more important than the frequency of service is the assurance on the part of the public that the service operates on time.

Close supervision of the system is, therefore, necessary to assure punctuality and precision of operation. Supervision is, to a large extent, a question of communication. This may be done by a variety of methods, ranging from the stationing of supervisors at fixed locations to note the time of passage, all the way up to sophisticated electronic monitoring systems.

Probably two-way radio communication between the vehicles and the central control point would be the most effective and economical means available today for small transit enterprises. Since each route will typically be served by only one bus, a serious delay can throw route schedules off for a considerable amount of time. With radio, drivers could relay information concerning delays (flat tire, mechanical trouble, traffic jams) to the control center, and relief vehicles could be put into service to maintain the schedule and to rescue passengers on the delayed bus.

Communication is of vital importance to the reliable operation of the system. It is, therefore, wise to spend a considerable sum on a high-quality communications system to assure the quality of operations. Neglecting this element, to the detriment of service quality, would be a case of the falsest sort of economy.

Maintenance. The maintenance subfunction is crucial in insuring that all vehicles are in the best possible condition as far as safety and mechanical performance are concerned. It also allows as close to 100 per cent availability of equipment as is feasible. This is the best way to avoid delays in service and permit a bare minimum of equipment to provide regularly scheduled operations.

The high standards of mechanical reliability necessary can best be met with a preventive maintenance program, rather than provocative maintenance as usually practiced by small-scale transit enterprise. As noted previously, complete records should be kept for each vehicle and for each driver. The cost of maintenance and checkups before any trouble occurs is offset by availability and reliability of equipment in service and lowering of the cost of lost patronage as a result of failure to maintain schedules. *Not* having to have additional vehicles, because much uncertainty is avoided, is another major benefit.

Marketing

THE principal objectives of the marketing function are to help provide management with necessary information concerning the market it serves, to remind the public constantly of the services offered and its advantages, and to provide information to the public concerning routes and schedules.

Advertising. The major job of the advertising subfunction is to use advertising media to keep the public reminded and informed. Through advertising the image of the transit operation as a vital and highly useful part of small-city activity will be created over time; by living up to the service claims, the image will be verified. Of course, to be effective, the advertising must be aimed at specific market segments. This may be achieved by means of careful advertising in newspapers and on radio, and perhaps through home delivered circulars and handbills. Cost savings and freedom from parking problems will probably be major themes.

In a society constantly bombarded with advertising, and surfeited with a benumbing variety of goods and services, an enterprise must advertise simply to remain in the public ken. Since the Full-system Concept aims at changing travel habits over a relatively long time period, a constant program of advertising must be maintained. This does not mean that advertising must be lavish in order to do the job. Rather, it means that it must be carefully prepared through the services of a reliable and perceptive advertising agency, and by regularly budgeting sufficient money to do an effective job.

Public Information. The subfunction of public information is closely allied to advertising. Its objective is to make sure the public knows what service is available. Attractive and easy-to-read schedules and maps are an obvious part of this program. The cost of such media is partially offset by the patronage of customers who use the service simply because they know and understand what is available. Undoubtedly, many potential patrons are lost to public transportation because information concerning service is inadequate, nonexistent, or requires a PhD in code breaking to fathom its meaning.

In addition to maps and schedules, information tablets mounted on poles or other suitable places (such as inside public buildings and apartment houses) should also contain routes and schedule information. A telephone information service must also be available. Indeed, by a tie-in with communications, a potential patron could be informed of the precise location of buses in his vicinity and be able to determine his chances of catching a given trip.

Public Relations and Sales. The public—or community—relations subfunction must provide a two-way street of information for management and for the public. More particularly, it would be the task of public relations to be in constant contact with social, fraternal, and other groups, not only to give presentations and talks on the services available, but to gather the reactions and ideas of the public concerning its needs and desires. Such information would then be relayed to management to aid in planning and decision making.

Another vital facet of public relations would be in selling various groups on utilizing charter and special services offered by the transit enterprise. This is a potentially lucrative part of the transit business and aggressive salesmanship and good service can add greatly to revenues.

A most vital role will be played by public relations in the period leading up to the inauguration of service on the Full-system Concept. In addition to meetings of various sorts to inform clubs, government bodies, and other organizations of the planned service, the flow of information to the press must be carefully handled. The six months leading up to actual commencement of operations should be a crescendo of information to whet the public appetite.

Conclusion

The Full-system Mass Transit Concept for a small city is only an idea. What has been presented is an outline of a procedure or method that could be followed.

The concept is not new or revolutionary; it is merely an attempt to bring to bear certain aspects of modern business techniques in the field of transit and on the stage of the small city.

The reaction to this idea, particularly among transit managers who have regularly faced the gruelling task of operating a mass transportation system in a small city, is not likely to be favorable at first. It flies in the face of the penny-pinching reality of the world in which they have to operate, and which, in many ways, is beyond their control. Nevertheless, the conventional wisdom of the transit industry has produced little more than deficits and declining service quality. The application of the Full-system Concept can surely do no worse.

The enterprise, regardless of whether it is privately or publicly owned, will not find it cheap in the short run to adopt the Full-system Concept. Several years of subsidy—from public or private sources—will be necessary even for systems with profit goals. However, the approach suggested seems to be a practical way of achieving either self-supporting mass transport, or a service form and managerial attitude that really meets public needs and perhaps offers substantive relief to urban congestion and isolation. Indeed, if wages continue to rise and objectives and policies demand increased service at low fares, the labor-intensive nature of any bus-oriented transit system seems to make subsidy mandatory. The Full-system Concept would at least guarantee the best possible management and full value for the money spent.

The obvious need is for the concept to be operationally tested. Prior to that, careful research work must be done on the most effective utilization of modern business techniques to the subfunctional areas set out above. Vital questions of detail as to organization, personnel selection, preventive maintenance programs, equipment selection, information systems, etc., must be answered. A host of hypotheses must be generated and a veritable draft "handbook" of full-system procedures established. The hypotheses should then be tested in the crucible of a small-city mass transit laboratory. Whatever the results, they are likely to be of substantial value to transit operations in small cities throughout the United States.

File
HB 335

February 28, 1972

Mr. Paul A. Carr, Secretary
Public Transportation Committee
Greater Anchorage Area Borough
Pouch 6-650
Anchorage, Alaska 99502

Dear Mr. Carr:

I appreciate very much your letter of February 24 relative to the Greater Anchorage Borough Planning and Zoning Commission's statement of position on public transportation. As you may be aware, the Judiciary Committee is presently considering HB 335 relative to mass transit. I am, therefore, sending a copy of your letter and position paper to the Chairman of this committee, Mr. William Moran.

Again, thank you for writing.

Sincerely,

Mike Miller, Chairman
House Local Government Committee

P.S. After dictation of this letter, HB 335 was passed out of Judiciary Committee and is now in Rules awaiting placement on the House calendar.

GREATER ANCHORAGE AREA BOROUGH
3500 TUDOR ROAD
POUCH 6-650
ANCHORAGE ALASKA 99502

February 24, 1972

PLANNING DEPARTMENT

Local Affairs Committee
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99801

Gentlemen:

The enclosed "Statement of Position" paper was printed at the Transportation Hearing held in Anchorage February 5th.

This paper presents the position of the Greater Anchorage Area Borough Planning and Zoning Commission's citizen subcommittee on Public Transportation.

They hope this will assist you in understanding some of their thinking on public transportation in Anchorage. Should you need additional information or have any questions, please do not hesitate to let me know.

Sincerely,

Paul A. Carr

Paul A. Carr, Secretary
Public Transportation Committee

PAC:rvd

Enc.

CLEAN AIR * CLEAN WATER * A CLEAN COMMUNITY

GREATER ANCHORAGE AREA BOROUGH
PLANNING AND ZONING COMMISSION

SUBCOMMITTEE ON PUBLIC TRANSPORTATION

STATEMENT OF POSITION

INTRODUCTION

As you are all aware, mass public transportation in the Anchorage area does not now exist. I will not go into the details of Anchorage's past transit systems or their failures. However, I feel it is significant that there are several buses now operating for the exclusive use of Federal - State programs; while we do not detract from this use we feel it further strengthens the need for a public transportation system that will utilize efficiently all those resources now available and being used for semi-public transportation in Anchorage. The simple fact is that the Anchorage area has no - or at best a limited public transportation choice.

Many groups have recognized the existence of the need for public transportation. At the urging of these various groups and individuals, the Greater Anchorage Area Borough created a subcommittee of the Planning and Zoning Commission to study public transportation. The Borough Planning Department then obtained a planning grant for $20,000 from the Urban Mass Transportation Administration. This planning grant funded a feasibility study for public transportation in the Anchorage area.

This study by John Bivens and Associates is now nearing completion. The Greater Anchorage Area Borough Public Transportation Subcommittee, which I am representing today, is making plans for a public meeting, at which we will solicit public reaction to that feasibility study as well as input on what the citizens of Anchorage feel they need and will use in the way of public transportation.

POSITION

The subcommittee's position on public transportation, which we feel is related to the purpose of this meeting, consists of several basic points. These are:

1. THAT ANCHORAGE URGENTLY NEEDS A PUBLIC TRANSPORTATION SYSTEM.

As the population increases and more motor vehicles are used, vehicle congestion and parking space will become an increasingly prominent problem unless the planning of existing street, highways, and rights-of-way extensions keeps pace. But increasing rights-of-way, extending highways, widening streets, and constructing freeways removes more and more areas from the useable tax base of the community and thereby places a greater tax burden on the areas remaining. In addition, by coordinating and developing an area to please the private automobile operator, many enjoyable features of urban living are sacrificed.

Only the creation of a public transit system complementary to the use of the private automobile will prevent the continuation of the course upon which Anchorage appears headed. As we believe private capital cannot provide public transportation and make a profit, it is, we feel, a public responsibility which all residents share.

2. THAT A PUBLIC TRANSIT SYSTEM THROUGH THE USE OF VARIOUS SIZE VEHICLES OR MODES BE ESTABLISHED TO SERVE THE ENTIRE AREA WITH RELIABLE, CLEAN, COMFORTABLE, TRANSPORTATION; AT A REASONABLE FARE THAT A TRANSIT SYSTEM BEGIN OPERATION IN A COMPLETE FORM RATHER THAN AS A PIECEMEAL EFFORT.

The initial area wide transit system should be a bus system using the best available air and noise pollution controls. However, this must be considered a phase I transit system and phase II public transit for Anchorage be planned and designed to incorporate such features as rail, guideways, moving sidewalks and personal transit vehicles where practical.

SPEED AND SAFETY

In order for a public transportation system to attract riders, it must have speeds that are comparable to those of other modes.

One of the difficulties which is recognized with bus transit systems is that the buses get snarled in the same traffic congestion as the private automobile.

Safe walkways must be provided to permit public access to bus stops and transfer stations.

COMFORT

Passenger comfort must receive attention in the selection of the vehicles as well as during their operations. It is impossible to attract riders to a system if the buses or other vehicles are cold in the winter and hot in the summer.

A transit system, to attract and hold a maximum amount of riders, must provide service that is:

1. Convenient and dependable;
2. Fast and safe;
3. Frequent in service;
4. Reasonable in cost;
5. Pleasing in appearance;
6. Flexible in that it can change with the needs of the community.

3. <u>THAT A PUBLIC TRANSPORTATION SYSTEM BE ESTABLISHED AS A PUBLIC UTILITY OF THE GREATER ANCHORAGE AREA BOROUGH AND THAT IT RECEIVE SUBSIDIZATION THROUGH TAXES, SHARED REVENUES, GRANTS AND OTHER MEANS.</u>

A transit system for Anchorage must be a public system subsidized directly or indirectly by the public. Public transportation in Anchorage is feasible only if the public accepts this responsibility. A transit system must encourage, not discourage, people to ride. In Anchorage the only way this can be accomplished is by the system being subsidized to a degree where the fare, if any, is kept at a minimum. A transit system must not only serve the entire Borough; financial support must come from the entire Borough.

The transit system should be under public ownership and control. Actual management, however, might be provided through contracts to private concerns. The transit system must be an organizational entity separate from the Borough. We believe this should be as a transit utility, not an authority, subject to the budgetary controls of the Borough Assembly, yet with greater autonomy of operation than have the municipal utilities presently serving the City and the Borough.

It will be necessary to have legislation granting authority to the City or Borough to operate public transportation systems, and we support the Guess-Bowman House Bill #335 which would grant this authority and we would ask consideration that this bill permit any transit utility operating solely within a single Borough be exempt from regulations of the Alaska Transportation Commission. We support Bill #334 which would provide state revenue to cities and boroughs providing transit facilities.

4. <u>THAT THE TRANSIT SYSTEM REMAIN FLEXIBLE SO THAT ROUTES AND FARE STRUCTURE IF ANY CAN BE ALTERED EASILY WITH NO DELAY FROM A REGULATORY AUTHORITY.</u>

As mentioned earlier, Anchorage, in the past, has experienced several attempts and failures at public transportation systems. While these systems have failed for various reasons, the major re-occurring reason is that they could not fill their intended function - that of providing a flexible and reliable system that gave adequate service to all potential riders.

Flexibility in the transit system as it is described here encompasses schedules, fares, routes, vehicles and policies.

The need for flexibility of service, scheduling, routes, etc., which we feel is an essential feature of a service-oriented transit utility requires that management be able to respond immediately to the changing conditions. This would be impossible if all changes must be approved by a presently over-burdened Alaska Transportation Commission. Fiscal control and contractual authority might well be delegated to a board by the Assembly for a period of five years, and then review of this authority should be evaluated by the Assembly at the end of that time to determine whether such a board should be continued, altered or be done away with.

To provide this flexibility the operation of the system must be continually monitored. The monitoring envisioned must be capable of signaling when there is a need for a change, it must not be costly, and it must be easy to understand and use.

5. THAT IMMEDIATE STEPS BE TAKEN TO SECURE FEDERAL FINANCING TO ESTABLISH A TRANSIT SYSTEM FOR ANCHORAGE.

Fortunately, the Federal government has at long last offered to assist urban areas in creating public transportation systems. In encourages the development of public transportation systems in all urban areas of the country through the Urban Mass Transportation Act of 1964. This act provides Federal grants to municipalities for the creation of public transportation systems.

Funds can be obtained from the Urban Mass Transit Administration of the Department of Transportation through the Federal Grant Program. These federal grants can be used to obtain buses, commuter rail cars, support equipment, and facilities. Anchorage can qualify for Department of Transportation Grants to fund at least two-thirds of the cost incurred to plan and develop a public transportation system.

6. THAT A PUBLIC TRANSPORTATION SYSTEM, WHERE POSSIBLE, BE DESIGNED TO COMPLEMENT THE EXISTING GREATER ANCHORAGE AREA BOROUGH SCHOOL BUS PROGRAM.

We do not feel that the existing school buses could effectively serve as a public transit conveyance. The reasons for this are numerous. However, we do think that a public transit system properly designed and routed can alleviate some transportation demands now made on the school bus program.

A financial arrangement might be made whereby the School District could provide financial assistance to the public transit system for payment of the pupils who would ride transit buses in lieu of regular school buses.

7. THAT THE CONCEPT OF THE AMATS PROGRAM OF SUPPLYING DATA AND PROVIDING INFORMATION ON THE TRANSPORTATION NEEDS OF ANCHORAGE BE CONTINUED.

While the subcommittee has expressed some opposition to the recently presented AMATS plan we do feel there is a need for continued transportation planning. However, we feel that a complete transportation network which provides for public transit requirements as well as continuing public participation must be a part of that planning.

The AMATS corridor concept has merit if it will be considered as a corridor reserved for unspecified transportation modes and not strictly for the exclusive use of the private automobile.

Realizing that there are others who wish to be heard I have not expanded in great detail on some of the positions with you, and hope to receive many comments at our forthcoming public meeting.

Realizing that there are others who wish to be heard I have not expanded in great detail on some of the positions presented here. However, we would be pleased to discuss these and other positions with you, and hope to receive many comments at our forthcoming public meeting.

Thank you.

Copies of our position will be forwarded to your committee by the Borough Planning Department.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

HB-340

References ... U.S.C.A.

SUBCHAPTER II.—RESTRICTIONS ON GARNISHMENT

§ 1671. Congressional findings and declaration of purpose

(a) The Congress finds:

(1) The unrestricted garnishment of compensation due for [illegible] services encourages the making of predatory extensions of [illegible]. Such extensions of credit divert money into excessive credit [illegible] and thereby hinder the production and flow of [illegible] interstate commerce.

(2) The application [illegible] creditors' [illegible] results in loss of employment by the debtor, [illegible] disruption of employment, production, and consumption [illegible] a substantial burden on interstate commerce.

(3) The [illegible] among the [illegible] of the several States relating to garnishment [illegible] in effect, [illegible] the uniformity of the bankruptcy laws and [illegible] the purposes thereof in [illegible] of the country.

(b) On the basis of the [illegible] stated in subsection (a) of this section, the Congress determines that the provisions of this subchapter are [illegible] and proper for [illegible] of carrying into execution the [illegible] Congress to regulate commerce and to establish uniform bankruptcy laws.

[illegible] 90-321, Title III, [illegible]

[illegible] Date. [illegible] of this [illegible] of [illegible]

§ [illegible] Definitions

[illegible] purposes of this [illegible]

[illegible] term "earnings" [illegible] paid [illegible] services, [illegible] otherwise, [illegible] pursuant to pension or retirement [illegible]

(b) The term "[illegible]" [illegible] part of [illegible] individual [illegible] the [illegible] required [illegible]

(c) The term "garnishment" [illegible] which the earnings of [illegible] required [illegible] payment of any debt.

[illegible] 321, Title III, [illegible]

[illegible] Date. [illegible] section [illegible] under [illegible]

§ [illegible] Restriction on [illegible] allow[illegible]

[illegible] Except as provided in [illegible] this title, the maximum part of the [illegible] individual [illegible] any workweek which is subjected to gar[illegible]

(1) 25 per centum of [illegible] for [illegible] the [illegible] thirty [illegible] Wage [illegible] able, [illegible]

[illegible] (2,

Exceptions

(b) The restrictions of subsection (a) of this section do not apply in the case of

(1) any order of any court for the support of any person.

(2) any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.

(3) any debt due for any State or Federal tax.

Execution or enforcement of garnishment order or process prohibited

(c) No court of the United States or any State may make, execute, or enforce any order or process in violation of this section.

Pub.L. 90-321, Title III, § 303, May 29, 1968, 82 Stat. 163.

References in Text. Chapter XIII of the Bankruptcy Act, referred to in subsec. (b)(2), is classified to section 1051 et seq. of Title 11, Bankruptcy.

Effective Date. Section effective July 1, 1970, see section 501(c) of Pub.L. 90-321, set out as a note under section 1671 of this title.

§ 1674. Restriction on discharge from employment by reason of garnishment

(a) No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

(b) Whoever willfully violates subsection (a) of this section shall be fined not more than $1,000, or imprisoned not more than one year, or both.

Pub.L. 90-321, Title III, § 304, May 29, 1968, 82 Stat. 163.

Effective Date. Section effective July 1, 1970, see section 501(c) of Pub.L. 90-321, set out as a note under section 1671 of this title.

§ 1675. Exemption for State-administered garnishments

The Secretary of Labor may by regulation exempt from the prohibitions of section 1673(a) of this title garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 1673(a) of this title.

Pub.L. 90-321, Title III, § 305, May 29, 1968, 82 Stat. 164.

Effective Date. Section effective July 1, 1970, see section 501(c) of Pub.L. 90-321, set out as a note under section 1671 of this title.

§ 1676. Enforcement by Secretary of Labor

The Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this subchapter.

Pub.L. 90-321, Title III, § 306, May 29, 1968, 82 Stat. 164.

Effective Date. Section effective July 1, 1970, see section 501(c) of Pub.L. 90-321, set out as a note under section 1671 of this title.

§ 1677. Effect on State laws

This subchapter does not annul, alter, or affect, or exempt any person from complying with, the laws of any State

(1) prohibiting garnishments or providing for more limited garnishments than are allowed under this subchapter, or

(2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness.

Pub.L. 90-321, Title III, § 307, May 29, 1968, 82 Stat. 164.

Effective Date. Section effective July 1, 1970, set out as a note under section 1671 of this title.

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
111 FOURTH STREET
JUNEAU, ALASKA 99801

DICKERSON REGAN
SUPERVISING ATTORNEY

March 24, 1971

The Honorable William J. Moran
Chairman, House Judiciary Committee
Alaska State House of Representatives
State Capitol Building
Juneau, Alaska 99801

Re: House Bill 340

Dear Mr. Chairman:

The above Bill is designed to accomplish two goals. First, it would raise some what the present income exemption level. Second, it would in effect put the Alaska and Federal income exemption laws under one roof. I thought perhaps a detailed explanation would be of assistance to you.

The present Alaska income exemption is found in A.S. 09.35.080(1). It provides for an exemption of $350 for the head of the family, and $200 for a single person.

Superimposed on Alaska's statute is the Federal Consumer Credit Protection Act of 1970, commonly known as Truth in Lending, found in 15 U.S.C.A. 1673(a). This provides that the amount subject to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week,or

(2) the amount by which his disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed . . ., whichever is less.

Because of the differences, the garnishee is forced to look at both laws to determine the maximum. This can be both confusing and time consuming. This problem is further compounded by the fact that the federal exemption is automatic, while the Alaska exemption must be "reserved" by the judgment debtor after garnishment. The federal statute refers to "earnings", defined as compensation paid or payable for personal services, while the Alaska exempts "income --- earned or inured to his benefit".

The Alaska exemption for a single person has already been superceded by the federal law. The federal minimum wage is $1.60 per hour. That figure times thirty is $48 per week. With 4-1/3 weeks per month, this would mean that $208 is exempt, which exceeds Alaska's $200. For all intents and purposes, the Alaska exemption will always be exceeded by the federal law as far as a single person's earnings are concerned. The only relevance of the Alaska law would be in cases where the income was other than earnings for personal services, such as dividends, interest or the like.

House Bill 340 would increase the floor to $500 per month for the head of the household, and $350 for a person not the head of a household, or 75 per cent, whichever is greater. The 75 per cent calculation is taken from the federal law, thus assuring that Alaska will at all times be in compliance with it. Thus to the extent that the wages of the head of the household subject to garnishment exceed $666 per month, the Alaska floor figure of $500 ceases to be operative and the per cent calculation is used. The same would be true for a single person at $466 per month.

It should be pointed out that due to the superimposition of federal law in Alaska law, neither the head of the household nor the single person earning wages will ever realize the full benefit of the $150 increase, since the net benefit will be less. The two attached examples will show this in detail.

The Bureau of Labor Statistics study of the average cost of living for a four person family in the lower economic level in Anchorage in 1969 disclosed that $763 per month was required for clothing, food, shelter, medicine and recreation. Certainly a single person can live for less, and not every household consists of four persons. However, $350 and $200 is unrealistic in terms of minimum needs vis a vis Alaska's high cost of living. The new suggested floor of $500 and $350 is more realistic, and should present a fair balance between the state's interest in personal well being and the state's interest in insuring that valid claims can be satisfied.

The federal law provides that the state can do more in limiting garnishments than it has done. 15 U.S.C.A 1677. Furthermore, if this Bill does eventually become law, the State can apply for an exemption from the provisions of §1673(a), as authorized by §1675. Even if such an exemption was not specifically granted, the fact that Alaska's law provided at least equivalent protection, and in some instances greater protection would mean that reference would only have to be made to one law, making matters far more simple for all concerned.

I would be pleased to appear before the Committee if it is thought I could provide helpful information.

Respectfully,

Allen T. Compton
Supervising Attorney

ATC:fm

EXAMPLE "A"

$2.10 per hour (Alaska minimum wage) times 40 hours per week time 4 1/3 weeks per month equals $364 per month income from wages.

Current Alaska	- head of household	- $350	- subj. to garn. $ 14.
Current Federal	- 75%	- $273	- subj. to garn. $ 91.
Proposed Alaska	-	- $500	- subj. to garn. $-0-.
Current Alaska	- single person	- $200	- subj. to garn. $164.
Current Federal	- 75%	- $273	- subj. to garn. $ 91.
Proposed Alaska	-	- $350	- subj. to garn. $ 14.

The head of the household, under current laws, would pick the Alaska exemption. The single person would pick the federal exemption. The net gain to the head of the household, under the proposal, would amount to $14. To the single person, it would be $77.

EXAMPLE "B"

Assume the person has $600 per month income from wages.

Current Alaska	- head of household	- $350	- subj. to garn. $250.
Current Federal	- 75%	- $450	- subj. to garn. $150.
Proposed Alaska	-	- $500	- subj. to garn. $100.
Current Alaska	- single person	- $200	- subj. to garn. $400.
Current Federal	- 75%	- $450	- subj. to garn. $150.
Proposed Alaska	- 75%	- $450	- subj. to garn. $150.

The head of the household, under current laws, would pick the federal exemption. The single person would also pick the federal exemption. The net gain to the head of the household, under the proposal, would amount to $50. To the single person, no gain would be realized, since he would choose the per centum calculation to obtain the maximum benefit; Alaska's per centum and the federal per centum being the same, his position would not be bettered by the proposal.

HB-340

AMOUNT OF WAGES EXEMPTED FROM GARNISHMENT, BY STATES

Alabama	75%
Alaska	$350 (earned within 30 days) if married; $200 if single.
Arizona	50% (30 days)
Arkansas	100% (60 days)
California	50% (30 days); 100% where debt not for necessaries and needed to support debtor's family.
Colorado	70% for heads of families; 35% for single persons.
Connecticut	100% from attachment; post-judgment exemption set by court.
Delaware	90% (New Castle County); 60% (Kent and Sussex Counties).
District of Columbia	90% of first $200 per month, 80 % of next $300, 50% of balance.
Florida	100%
Georgia	$3 per day plus 50% of excess.
Hawaii	95% of first $100 per month, 90% of next $100, 80% of balance.
Idaho	50%; 75% where debt not for necessaries and needed to support debtor's family (30 days); maximum, $100 per month.
Illinois	85% or $45 per week, whichever is more; maximum of $200 per week.
Indiana	$15 per week plus 90% of excess.
Iowa	$35 per week for head of family plus $3 for each dependent child under 18.
Kansas	90% (3 months); 100% from garnishment by collection agencies.
Kentucky	90% of first $75 per month; maximum $67.50.
Louisiana	80%; minimum $100 per month.
Maine	$30 (one month); minimum $10.
Maryland	75% in some counties; $100 in others.
Massachusetts	100% prior to judgment; $50 per week after judgment.
Michigan	100% prior to judgment; 60% for householders having a family and 40% for others, with certain minima and maxima.
Minnesota	50%; 100% (30 days) where necessary for use of family.
Mississippi	$100 for heads of families; $50 for single persons.
Missouri	90% for heads of families.
Montana	50% (45 days); 100% where debt not for necessaries and needed for use of debtor's family.
Nebraska	90% for heads of families.
Nevada	50% (30 days); 100% where debt not for necessaries and needed for use of debtor's family.
New Hampshire	$20 per week.

New Jersey	90%; minimum $18 per week.
New Mexico	75% for heads of families.
New York	90%
North Carolina	100% (60 days) where needed for use of debtor's family.
North Dakota	$35 per week or, if head of family, $50 plus $5 for each dependent, but no more than $25 per week.
Ohio	80% of first $300 per month and 60% of balance for heads of families (minimum $150); $100 (30 days) for others.
Oklahoma	75% (90 days); 100% where needed to support family.
Oregon	$175 (30 days).
Pennsylvania	100%
Rhode Island	$30
South Carolina	100% (60 days) where needed for use of debtor's family.
South Dakota	100 % (60 days) where needed for use of debtor's family.
Tennessee	$17 per week for head of family plus $2.50 per week for each dependent under 16; $12.per week for others.
Texas	100%
Utah	50% (30 days); $50 minimum if married or head of household.
Vermont	50% or $25, whichever is less.
Virginia	75%; minimum $100 per month, maximum $150 for heads of families; for others, 50% of the above.
Washington	$35 per week and $5 for each dependent; maximum $50 per week, for persons who have families dependent on them; $25 per week for others.
West Virginia	80%; minimum $20 per week.
Wisconsin	60% (30 days) with certain minima and maxima.
Wyoming	50% (60 days).

Example "A". $500 per month income after required withholding, husband, wife and two children, income necessary to support family. 27 states have a higher exemption; 1 state has the same exemption; 20 states have a lower exemption; 2 states can't be determined.

Example "B". $500 per month income after required withholding, single person, income necessary to support self. 26 states have a higher exemption; 2 states have the same exemption; 20 states have a lower exemption; 2 states can't be determined.

The above schedule of state exemptions can be found in Brunn, Wage Garnishment in California: A Study and Recommendations, 53 Calif. L. Rev. 1214 (1965).

HB 341

Arlie Roy POPE, Appellant,
v.
STATE of Alaska, Appellee.
No. 1127.

Supreme Court of Alaska.
Dec. 21, 1970.
Rehearing Denied Feb. 25, 1971.
See 480 P.2d 697.

Murder prosecution. The Superior Court Third Judicial District, Anchorage, Ralph E. Moody, J., rendered judgment, and defendant appealed. The Supreme Court, Erwin, J., held that it would not consider claim that burden of proof on insanity issue was improperly placed, although proper objection was made concerning burden of proof, where no objection was made, testimony presented, or instructions requested concerning intertwined issue of test for insanity.

Affirmed.

Connor, J., concurred in part and dissented in part and filed opinion.

1 **Judges** ⇐53

Defendant who did not exercise challenge to judge to whom case was reassigned within five days of reassignment, even during trial, waived right to peremptory challenge. AS 22.20.022.

2 **Criminal Law** ⇐589(1)

Refusal to grant continuance of five days to permit defendant time before trial to consider and file affidavit for peremptory disqualification of judge was not error. AS 22.20.022.

3 **Criminal Law** ⇐412.2(2)
Searches and Seizures ⇐3.3(1)

Situation presented when officer appeared at scene of shooting, finding body identified by defendant and victim's wife, was within "on-the-scene questioning" exception to Miranda warning requirement, and officer could ask defendant whether he had a gun and could search his person for weapons.

4 **Criminal Law** ⇐394.4(2)

Gun taken from defendant's automobile at scene of shooting and allegedly pri-

or to defendant's arrest was admissible where it was lying on front seat of automobile in plain view and thus not product of search.

5. **Criminal Law** ⇐1038(1, 3)

Supreme Court would not consider claim that burden of proof on insanity issue was improperly placed, although proper objection was made concerning burden of proof, where no objection was made, testimony presented, or instructions requested concerning intertwined issue of test for insanity.

James R. Clouse, Jr., Anchorage, for appellant.

Harold W. Tobey, Dist. Atty., Richard R. Felton, Asst. Dist. Atty., Anchorage, G. Kent Edwards, Atty. Gen., Juneau, for appellee.

Before BONEY, C. J., and DIMOND, RABINOWITZ, CONNOR and ERWIN, JJ.

OPINION

ERWIN, Justice.

Appellant, Pope, was convicted of second degree murder in connection with the death of one David Silva on July 9, 1968. According to his own testimony, he arose on that date at his usual hour and prepared himself for work. While driving to work he began to feel sick and decided to have only coffee in place of his usual breakfast. As appellant continued towards his job, the sickness became more severe and he decided to turn around and drive back to his motel. He testified that this condition of nervousness and sickness at his stomach had occurred with frequency in the period of time shortly before the shooting occurred.

After returning to his motel room, appellant consumed a little less than one-half of a pint of alcoholic beverage, remaining in his room and watching television. He made several attempts to reach his former wife, Irma Pope, and was at last successful.

However, Mrs. Pope refused to speak with him, slamming down the telephone. Appellant stated that the reason that he had attempted to call his former wife was that he felt really sick and was looking for help from someone.

After being rejected over the telephone, appellant described a strange feeling, "like something was spinning around the top of my head, from right to left, right underneath the skin against the skull and when you closed your eyes you could see—could see a streak of light coming around and around. * * *" He described the light as not being mean or anything, but the light said "kill him, kill him, kill him"—just kept repeating it; and finally he said it to himself and as soon as he did he felt very good and was not sick any more. Appellant further stated that after the lights had stopped in his head, he felt very sorry for David Silva because of what was going to happen; he did not think there was anything that he could do to prevent the killing of David Silva, and he knew he was going to do it, but he didn't yet know just how. When appellant finally agreed with the light in his head which told him to kill Silva, the nervousness disappeared, as did his upset stomach.

Appellant's recollection of the events that occurred after he left the motel was hazy and vague. He recalled only being near the parking lot at Anchorage Bedding and Furniture and next seeing the gun in his hand on the door ledge of his automobile. Appellant did not recall shooting the decedent, but only remembered watching the decedent sitting down and then lying backwards on the ground.

Officer Pavlovich was the first law enforcement officer to arrive on the scene. Upon arriving he observed the deceased, a woman at the head of the decedent, and another man, later identified as the appellant, alongside the decedent in either a squatting or kneeling position. Officer Pavlovich went over to the decedent, checked his pulse, and pronounced him dead. He next asked the woman what had happened. The woman, Mrs. Silva, indicated that appellant had shot Mr. Silva. In response to this, Pavlovich stood the appellant up and started to search him for weapons.

At this point in the sequence of events there is a dispute as to the actual occurrences. A Mr. McConnell testified that he observed Officer Pavlovich going over to appellant and questioning him for a minute or two before finally searching him for a weapon. The officer, on the other hand, testified that after he had examined Silva he immediately started to search appellant. Appellant's version of the story is that as he was being frisked by Officer Pavlovich, he was asked if he had a gun, to which he responded yes, that it was in the car. Officer Pavlovich claims that the information about the gun was volunteered by Pope and that no such question had been asked.

Mr. McConnell stated that after eliciting this information, Officer Pavlovich proceeded to appellant's car, with his arm on appellant's arm, to retrieve the weapon, which was located in the middle of the front seat. Officer Pavlovich stated that after Pope had volunteered the information as to the whereabouts of the gun, Pope proceeded to the automobile and Pavolich hurried to beat him to the car in an effort to retrieve the weapon.

On cross-examination Officer Pavlovich described the appellant's appearance as being dazed and testified that his feeling at the time was that appellant was not drunk, but either dazed or at least under the influence of alcohol—but he could not tell which. Officer Pavlovich further testified that although he detected nothing radically wrong with appellant, that is, appellant walked normally and spoke clearly and distinctly, albeit very slowly, he nevertheless seemed to be preoccupied. At another point in his testimony Pavlovich stated that he thought appellant was either under the influence of alcohol or in a state of shock. Furthermore, he was not sure whether appellant was in possession of his faculties at this time.

On August 5, 1968 the grand jury for and arraigned immed pellant entered a pl the trial date was 1968, before the H Davis, Superior Co trial, on November quest of the prosecut ing was held. On Superior Court ente effect that the appell stand trial.

Because of contin begin until Februar time the defendant Honorable Ralph E. Superior Court, rath Davis, to whom the c originally. Timely ol appellant to the unan February 18, 1969, verdict of guilty of degree. Notice of a

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On August 5, 1968, Pope was indicted by the grand jury for first degree murder and arraigned immediately thereafter. Appellant entered a plea of not guilty, and the trial date was set for December 12, 1968, before the Honorable Edward V. Davis, Superior Court Judge. Prior to trial, on November 29, 1968, at the request of the prosecutor, a competency hearing was held. On January 16, 1969, the Superior Court entered an order to the effect that the appellant was competent to stand trial.

Because of continuances, trial did not begin until February 10, 1969. At that time the defendant appeared before the Honorable Ralph E. Moody, Judge of the Superior Court, rather than Edward V. Davis, to whom the case had been assigned originally. Timely objection was made by appellant to the unannounced change. On February 18, 1969, the jury returned a verdict of guilty of murder in the second degree. Notice of appeal was duly filed.

Appellant raises four specifications of error in the trial below. His first specification is that the court committed prejudicial error in reassigning appellant's case from Judge Davis to Judge Moody without giving appellant five days from the date of reassignment to consider and possibly file a peremptory challenge affidavit as provided in AS 22.20.022; his second, that the trial court erred in overruling the appellant's motion to suppress the evidence seized by Officer Pavlovich from the appellant's car prior to a lawful arrest; and his third, that the trial court incorrectly admitted the statements of appellant made prior to his being given the proper *Miranda* warnings and after he had become a suspect in the crime and had been substantially deprived of his freedom of action. Finally, he contends that the trial court should have ruled as a matter of law that the burden of proving sanity is on the state rather than the burden of proving insanity being upon the defendant, when there was some evidence in the record to indicate that sanity was at issue.

I

In his first claim of error, appellant contends that because of the assignment procedure used herein,[1] he did not have sufficient opportunity to determine and if necessary file an affidavit alleging he believed that he could not obtain a fair and impartial trial.

Trial proceeded on February 10, 1969, appellant making timely motion,[2] which motion was denied.

1. There was no advance notice to counsel of the reassignment of this case from Judge Davis to Judge Moody on the day of trial. It should be noted that subsequent to the trial herein this court in the case of Roberts v. State, 458 P.2d 340, 346 (Alaska 1969) pointed out the potential problems of such a practice in suggesting that this method of reassignment of a case should be avoided in the future:
"A method should be devised and utilized to make assignment of cases to judges sufficiently in advance of trial or hearing, with notice of the assignment being given to the parties, so that the parties can be afforded their rights under AS 22.20.022 without interfering with scheduled hearing or trial dates.

2. The motion was as follows:
Mr. Clouse: Your Honor, for the record, at this time, I would like to state an objection to the Court's requiring us to go to trial at this time and not before the—Judge Davis who was previously assigned this case. This deprives the defendant of the opportunity to investigate and exercise any challenge that he may have within the five day period as provided by rule and statute.
The Court: Motion's denied since this is merely a procedural matter and it delays the—delays the carrying on of Court business if we give effect to that for the five days rule. Other than the objection, is defense ready to proceed?
Mr. Clouse: Yes, your Honor.

AS 22.20.022 states in relevant part:

"*Peremptory disqualification of a superior court judge.* (a) If a party or his attorney in a superior court action, civil or criminal, files an affidavit alleging under oath that he believes that he cannot obtain a fair and impartial trial, the presiding judge shall at once, and without requiring proof, assign the action to another judge of that district,

Appellant correctly points out that the granting of the five-day period is to allow a party or his attorney an opportunity to investigate the judge to whom the case is assigned and if necessary file the requisite affidavit for disqualification, thus avoiding the waste of judicial time which would result if an affidavit or disqualification were not filed until the date of trial because this would mean that the case would have to be continued until another judge could be assigned and the disqualified judge would not be ready at that time to start the trial of another action.[3] Appellant further correctly argues that the provisions of this statute have been interpreted by this court to mean that once the affidavit is filed, the judge involved is without power or jurisdiction to take any further action in the proceeding. Channel Flying Inc. v. Bernhardt, 451 P.2d 570 (Alaska 1969).

[1, 2] But appellant has not shown that any harm resulted to him from the denial of his motion. Instead, he invites us to speculate that he suffered some possible prejudice, even though he did not challenge the trial judge because he felt that any challenge he made might have a prejudicial effect on the jury. The gist of appellant's argument appears to be that since any challenge might affect the jury he never seriously considered whether or not he should exercise the challenge because the reassignment made the choice more difficult. Since appellant could have exercised the challenge at any time within five days of reassignment, even during trial, we hold that his failure to do so was a waiver of his right to a peremptory challenge to the trial judge, and it was not error for the court to refuse to grant a continuance of five days to permit appellant to ponder this matter at length.

II

Appellant claims that the trial court committed error in refusing to suppress as evidence (1) appellant's oral statement about the gun, and (2) the gun itself, which the officer seized in appellant's car. The argument is that this evidence is tainted because the required warnings under Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) were not given by the officer until after the seizure of the gun, that appellant had already become a suspect in the crime, and that he had been substantially deprived of his freedom in a significant way. The test of when warnings must be given under *Miranda* is whether the accused has been "taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning." 384 U.S. at 478, 86 S.Ct. at 1630, 16 L.Ed.2d at 726.

We need not explore such problems as whether the "in custody" test of *Miranda* displaces the "focus" test of Escobedo v. Illinois, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977 (1964), or whether the two tests can be regarded as alternatives to some extent.[4] For it is plain to us that this case falls within an important exception stated by the court in its opinion in *Miranda*. After pointing out that it did not intend to hamper the traditional function of police officers in investigating crime, the court said:

> General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-

or if there is none, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay."

* * * * *

"(e) The affidavit shall be filed within five days after the case is at issue upon a question of fact, or within five days after the issue is assigned to a judge, whichever event occurs later, unless good cause is shown for the failure to file it within that time."

3. Roberts v. State, 458 P.2d 340, 346 (Alaska 1969).

4. United States v. Hall, 421 F.2d 540 (2nd Cir. 1969); Graham, What is Custodial Interrogation?: California's Anticipatory Application of Miranda v. Arizona, 14 U.C.L.A.L.Rev. 59, 114-15.

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process is not affected by our . It is an act of responsible citi- for individuals to give whatever they may have to aid in law present. In such situations the com- atmosphere inherent in the process ly interrogation is not nec- present. 384 U.S. at 477–478, 86 at 1629–1630, 16 L.Ed.2d at 725–

terpreting *Miranda* various courts to draw lines between what are investigative interviews and al interrogations. The United States Court itself has made it plain rogatorial interrogation could take outside the station-house where one free to go where he pleased but arrest.'" Orozco v. Texas, 394 24, 325, 89 S.Ct. 1095, 1096, 22 L. 311, 314 (1969). The courts must , therefore in each case whether sphere and setting of an interro- re of such coercive effect or indi- significant restraint as to trigger for a *Miranda* warning. There is agreement about the criteria for determination.

[3] But the case at bar is a strong one applying the "on-the-scene question- exception to the *Miranda* warning re- ent. The officer here was present- with a situation of great emergency. of violence had occurred, the vic- was lying on the ground dead. There more than one person present. Both rest his own safety and that of the officer had to elicit information what had happened, and about the which had obviously been used in the For the same reason the officer the right to conduct a strictly search ("frisk") of Pope's person ons under the rule of Terry v. 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968), which he did.[5] To hold that, that while a policeman faced with an emergency such as the one which confronted Officer Pavlovich may "frisk" a suspect for weapons he may not simultaneously ask him whether he is armed, would be an unrealistic and unreasonable extension of the *Miranda* rule.

[4] Appellant also contends that, because the revolver was seized from Pope's automobile prior to the time he was placed under arrest, it was inadmissible because it was not the product of a search incident to arrest. The difficulty with this line of argument is that the gun was not the product of a "search" at all; it was lying on the front seat of the car in plain view. As soon as he saw it, Officer Pavlovich seized it and unloaded it, both to preserve it and its cartridges as evidence and to prevent appellant, who was standing beside him, from getting hold of it. His conduct was entirely justified.

> It has long been settled that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence.[6]

III

The final point raised by appellant is a challenge to the burden of proof in insanity cases as set forth in the opinion of this court in Chase v. State.[7] A review of the record reveals that the only testimony before this court in reviewing this point is the testimony of Officer Pavlovich, the appellant, Pope, Bill McConnell, and the cross-examination of appellant's ex-wife. Testimony given by Dr. J. Ray Langdon, a psychiatrist, and Marie Doyle, a psychologist, at the trial, as well as the testimony of additional police officers and others at the scene of the crime, was not made a part of the record on appeal.

v. State, 425 P.2d 235, 238 1967).

v. United States, 390 U.S. 234, S.Ct. 992, 993, 19 L.Ed.2d 1067, ; Creighton v. United States, S.App.D.C. 115, 400 F.2d 651 (1968); Klockenbrink v. State, 472 P.2d 958, 961 (Alaska 1970). *See* Stevens v. State, 443 P.2d 600, 602 (Alaska 1968).

7. 369 P.2d 997, 1003 (Alaska 1962).

While proper objections were made at the trial concerning burden of proof in insanity cases, no objection was made to instructions on the test for insanity as given by the trial court, nor was any testimony presented nor instructions requested concerning such an issue.

[5] Since in our opinion the burden of proof as to the defense of insanity and the actual test for insanity are inseparably intertwined,[8] we are placed in the position of attempting to review the entire basis for the present rule on the defense of insanity in Alaska on an inadequate record without complete presentation of these issues to the trial court. This we decline to do.[9]

The importance of the defense of insanity has been underscored recently by a series of excellent opinions in federal courts which have considered, and in many cases adopted, the A.L.I. test for insanity,[10] and a series of equally searching state court opinions which have noted more than one position, but have tended to retain the *M'Naghten* rule.[11] These opinions note that there are presently four separate tests for insanity[12] which have received varying degrees of judicial acceptance. They serve to underscore the difficulty of choosing a proper test for insanity and the corresponding burden of proof without complete presentation on the issue in the trial court and ultimately in this court.[13]

The judgment of the Superior Court is hereby affirmed.

CONNOR, Justice (concurring in part and dissenting in part).

I concur with the majority opinion except the portion dealing with the burden of proof in insanity cases, and allied questions. As to that portion of the majority opinion I must respectfully dissent.

This case went to the jury on instructions concerning the defense of insanity which were patterned on those approved by this court in Chase v. State, 369 P.2d 997 (Alaska 1962). Counsel for appellant objected to these instructions as improperly placing the burden on the accused to establish his insanity by a preponderance of the evidence. He thus raised and preserved for appeal the questions of what is the burden of proof and where it should be placed in

8. Approximately one-half of the states put the burden on the defendant while the other half and the federal courts put the basic burden on the prosecution. See annot. 17 A.L.R.3rd 116 (1968).

9. For a similar action by a federal court, see Ramer v. United States, 300 F.2d 561 (9th Cir. 1968).

10. Wade v. United States, 426 F.2d 64 (9th Cir. 1970); Blake v. United States, 407 F.2d 908 (5th Cir. 1969); United States v. Chandler, 393 F.2d 920 (4th Cir. 1968); United States v. Shapiro, 383 F.2d 680 (7th Cir. 1967); Pope v. United States, 372 F.2d 710 (8th Cir. 1967), vacated on other grounds, 392 U.S. 651, 88 S.Ct. 2145, 20 L.Ed.2d 1317 (1968); United States v. Freeman, 357 F.2d 606 (2nd Cir. 1966); Wion v. United States, 325 F.2d 420 (10th Cir. 1963), cert. denied 377 U.S. 946, 84 S. Ct. 1354, 12 L.Ed.2d 309 (1964); United States v. Smith, 404 F.2d 720 (6th Cir. 1968).

11. FOR A.L.I.: State v. White, 93 Idaho 153, 456 P.2d 797 (1969).
FOR M'NAGHTEN: State v. Mulumphy, 401 P.2d 677 (Ariz.1969); State v. Moeller, 433 P.2d 136 (Hawaii 1967); State v. Harkness, 160 N.W.2d 324 (Iowa 1968); Williams v. State, 451 P.2d 848, 851 (Nev.1969); State v. Gilmore, 242 Or. 463, 410 P.2d 240 (1966); Commonwealth v. Rightnour, 435 Pa. 104, 253 A.2d 644 (1969) (Aff'd by equally divided court).

12. (1) The M'Naghten Test, Daniel M'Naghten case, 8 Eng.Rep. 718 (H.L. 1843).
(2) Durham Test, Durham v. United States, 94 U.S.App.D.C. 228, 214 F.2d 862 (1954).
(3) American Law Institute Test, American Law Institute, Model Penal Code, Section 4.01(1) (Final Draft 1962).
(4) English Test, British Royal Commission on Capital Punishment, 1949-1953, 1953 Report at page 116, quoted in United States v. Currens, 290 F.2d 751, 774, n. 32 (3rd Cir. 1961).

13. Once before this court has refused to review the test for insanity for Alaska based on an inadequate record. See Dinmick v. State, 449 P.2d 774, 770 (Alaska 1969).

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OR, Justice (concurring in part nting in part).

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He is properly entitled to a those questions.

ority of my colleagues feel that of proof question and the sub- test of insanity are inter-related. I for that very reason I believe topics logically can, and properly determined by the court.[1]

of an adversary presentation of legal arguments bearing upon the prop- of insanity in criminal cases should an impediment to decision in this instance. Ultimately one must a large body of legal and psychiatric even to become conversant with jects. Appellate briefs are of much here than in the resolution of al questions.[2] Surely this would the first time that this court decided grounds or under a doctrine not presented in the briefs.[3]

is another reason why we should these questions now, not later. In the test currently obtaining un- v. State, supra, is so inherently to dissuade either defendants or counsel from raising the defense of or adducing evidence in support of it is difficult to get the insanity before us on appeal.

anity defense is much like a con- and avoidance. One virtually ad- actual elements of the crime but anity as a special ground of exon- One claiming that he did not com- offense, but who alternatively that he was insane when he did com-

mit it, has little hope of success. While such an approach is procedurally permissible, as a practical matter it is a foolhardy strategy. A person invoking the Alaska rule on insanity, even in a strong case, has almost precluded himself from an acquittal. The current test thus exerts a chilling effect upon one who might seek a change in the law through the appellate process. This is true even though he may have suffered from serious mental illness, of a psychotic type, at the time he committed the act with which he is charged. Because of the *in terrorem* effect of the current Alaska test, I see no reason to postpone corrective measures, especially if we believe that the test can be improved.

I

All discussion of the tests of criminal responsibility inevitably must refer to *M'Naghten's Case*, 10 Cl. & Fin. 200, 8 Eng.Rep. 718 (1843), which is regarded as the English source of the rule followed in most American jurisdictions for over a century. In that case Daniel M'Naghten attempted to assassinate Robert Peel, the Prime Minister. Because Peel, on the fatal day, happened to ride in Queen Victoria's carriage instead of his own, M'Naghten shot into the wrong carriage and killed Drummond, Peel's secretary. From all of the available information it seems quite plain that M'Naghten was suffering from psychotic delusions of persecution. At his trial Lord Chief Justice Tindal virtually directed a verdict in his favor.[4]

(discussed later herein) would be the most suitable.

3. One such case was Grossman v. State, 457 P.2d 226 (Alaska 1969), adopting an objective standard of entrapment, though neither party directly briefed that doctrine. Surely others could be found by searching the briefs and comparing them with the opinions rendered by this court during the last ten years.

4. Guttmacher & Weihofen, Psychiatry and the Law, 403 (1952); Roche, "Criminality and Mental Illness—Two Faces on the Same Coin," 22 U.Chi.L.Rev. 320, 324

At the trial the medical witnesses and the court had been influenced by the writings and theories of such advanced thinkers as Dr. Isaac Ray, the first great forensic psychiatrist in America. It was Dr. Ray's thesis that insanity must be measured by evaluating the entire personality structure of an individual, and not by tests such as merely the ability to know right from wrong.[5] At any rate, M'Naghten was acquitted. Unfortunately for the development of law, the case did not end there.

Despite commitment of the hapless M'Naghten to an insane asylum, Queen Victoria was outraged by the acquittal, probably because there had already been three attempts on her life and one on that of the Prince Consort. In a letter to Sir Robert Peel, the Queen deplored the action of the judges in allowing verdicts of not guilty by reason of insanity in cases of this kind because she was convinced that such malefactors "were perfectly conscious and aware of what they did." She pressed for legislation to require judges "to interpret the law in this and no other sense in their charges to the Juries."[6] The House of Lords was convened, and the fifteen judges of the common law courts were called upon, in an atmosphere of political pressure, to answer five rather vacuous questions about criminal responsibility in English law. Interestingly enough, it was Lord Chief Justice Tindal who responded with a test more rigid than that which he had used when M'Naghten was tried before him. The *M'Naghten* rule in essence is:

> "[T]o establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing: or, if he did know it, that he did not know he was doing what was wrong." 10 Cl. & Fin., at 210, 8 Eng.Rep., at 722.

Thus, in a case which was no longer a case, in response to hypothetical questions based on notions of phrenology and monomania which were then in vogue, the judges, in a dramatic departure from common law decisional technique, acting more as a governmental committee than a court, pronounced a rule which has been followed unthinkingly by many courts ever since. Of little avail was the restrained observation of Sir James Stephen that "every judgment delivered since the year 1843 has been founded upon an authority which deserves to be described as in many ways doubtful."[7] The test could at least have been limited to cases of paranoia like that suffered by M'Naghten, but instead it was applied by many courts as a rule of universal and implacable validity, appropriate for all types of mental and emotional derangement.

The *M'Naghten* test has been supplemented in many jurisdictions by the "irresistible impulse" test, under which one suffering from a mental disease, of such severity that the freedom of will is destroyed, may be excused from culpability.[8]

In Alaska, before statehood, the right-and-wrong test, supplemented by the irresistible impulse test, was considered the applicable rule.[9] In Chase v. State, 369 P.

(1955); Biggs, The Guilty Mind, 95-97, 102 (1955).

5. Dr. Ray's views have a modern ring. "[T]he insane mind is not entirely deprived of * * * power of moral discernment, but on many subjects is perfectly rational and displays the exercise of a sound and well balanced mind." Ray, Medical Jurisprudence of Insanity 13 (3d ed. 1853).

6. Biggs, supra n. 4, 103.

7. II Stephen, History of the Criminal Law of England 153 (1883).

8. As of 1955, about 14 states, and the federal judiciary, had adopted the irresistible impulse addition to the test. Mod.Penal Code, Tent.Dr. No. 4,101 (1955).

9. Matheson v. United States, 227 U.S. 540, 33 S.Ct. 355, 57 L.Ed. 631 (1913); Davis v. United States, 165 U.S. 373, 17 S.Ct. 360, 41 L.Ed. 750 (1897); Sauer v.

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2d 997 (Alaska 1962), however, this court adopted a particular version of what it regarded as the *M'Naghten* rule. The test laid down there was that in order to exculpate the defendant he must be laboring under such mental disease or derangement at the time of the act "as to render him incapable of knowing the nature and quality of his act *and* of distinguishing between right and wrong in relation to the act with which he is charged." 369 P.2d, at 998. (Emphasis supplied.) This results in a formulation more rigid than the *M'Naghten* test, and without the irresistible impulse supplement which had previously obtained in Alaska.[10] In that sense the *Chase* case is a retrograde decision in a time of generally forward legal progress.[11]

The court in *Chase* relied on three cases: Jessner v. State, 202 Wis. 184, 231 N.W. 634, 71 A.L.R. 1005 (1930); Maas v. Territory, 10 Okl. 714, 63 P. 960 (1901); and Montgomery v. State, 68 Tex.Crim. 78, 151 S.W. 813 (1912). As the Note, "Criminal Insanity," UCLA-Alaska L.Rev., 8 Alaska L.J. 152, 153-54 (Aug. 1970), points out, these cases were decided before many of the modern advances in psychiatry had been widely disseminated. Moreover, the instructions given in these cases lacked clarity and therefore were extremely confusing. *Jessner* and *Montgomery* indeed held that the phrases "the nature and quality of the act" and "the difference between right and wrong" were synonymous; if the defendant could not understand the one, he could not distinguish the other. However, as the Note, *supra*, indicates, these phrases are not at all synonymous in ordinary speech.

To torture English into performing such a linguistic cakewalk requires unusual skill. Since juries are composed of but ordinary reasonable laymen, additional complicated instructions would have to be given to insure that the jury does not consider the terms according to their usage in common everyday speech and thereby misapply the law. Such verbal gymnastics should not be employed in jury instructions. The purpose of jury instructions is to instruct and enlighten the jury on the law, not to confuse them.[12]

It also appears that the instructions in *Jessner* focused solely on the defendant's ability to distinguish between right and wrong, ignoring completely his ability to understand the nature and quality of his act.[13] In *Maas*, the actual instruction did follow the disjunctive form of the *M'Nagh-*

United States, 241 F.2d 640 (1957), cert. denied 354 U.S. 940, 77 S.Ct. 1405, 1 L.Ed.2d 1539; Rivers v. United States, 270 F.2d 435 (1959).

10. That the Alaska test is more restrictive than M'Naghten is apparent from the following example. One laboring under a psychotic delusion, such as that he is being persecuted or that God has ordained that he must kill, may well know the nature of the act committed, yet not be able to appreciate its wrongfulness. Under M'Naghten he would not be culpable, but under Chase he could not be acquitted. *Cf.* People v. Schmidt, 216 N.Y. 324, 110 N.E. 945 (1915), per Cardozo, J.

11. Speculation persists in Alaska legal circles that the use of the conjunctive "and" in the instructions which were validated in Chase possibly came about through a typographical error by the secretary to the trial court judge. If this is so, then Chase is no less an historical accident than M'Naghten's Case.

12. "But 'glory' doesn't mean 'a nice knock-down argument,'" Alice objected.
"When *I* use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."
"The question is," said Alice, "whether you *can* make words mean so many different things."
"The question is," said Humpty Dumpty, "which is to be master—that's all."
L. Carroll, Through the Looking Glass, in The Annotated Alice 269 (1960).
This nonsensical repartee brings sharply into focus a problem which has plagued logicians since at least the time of William of Occam. A lack of awareness of this problem has led to much mischief in legal interpretation.

13. 202 Wis. at 196, 231 N.W. at 639.

ten test.[14] If anything, this case stands for an adoption of the true *M'Naghten* rule, not the rule of *Chase*. In sum, I do not find any of these cases of sufficient precedential value to warrant an adherence by this court to what is little more than a modified "wild beast" test.[15]

Since the *M'Naghten* case, and even in the eight years since Chase v. State was decided, a great deal of critical evaluation and development has occurred, in an effort to achieve more advanced and just techniques for handling this serious problem.

The torrent of legal writing is so vast that it is nearly impossible for all but a few to read or comprehend everything which has been said on this basic issue of criminal responsibility. Still, certain broad outlines can be stated. There is nearly universal dissatisfaction with the *M'Naghten* rule on the part of scholars, jurists, and psychiatrists who have seriously inquired into the subject. The main difficulty with the *M'Naghten* rule is that it focuses exclusively on the cognitive element in mental life, that is, the knowledge of right and wrong or of the nature of one's act. One of its underlying assumptions is that mental illness is a failure of intellectual function. This reflects an artificial dualism of mind and emotions which ignores the affective aspects of the human personality. While there are many schools of psychiatric thought, there is broad agreement that mental illness can be understood only by looking at man as an integrated, psychobiological whole.[16] Because the *M'Naghten* rule views man within the artificial strictures of cognition, courts and juries are deprived of much of the benefit to be gained from the modern science of psychiatry.[17]

Other criticisms of the *M'Naghten* rule would probably be applicable to any verbal formulation.[18] The difficulty stems from the different functions and purposes of law and psychiatry. The aim of psychiatry is to examine human behavior and mental disease in a scientific manner and to develop therapeutic methods of dealing with the emotional problems of mankind. On the other hand, it is the task of the law to develop normative rules to control human behavior. It has always been recognized that certain persons must be regarded as not the proper subjects of criminal conviction, and that because of their mental aberrations it would be unjust to hold them responsible for their conduct.[19] Ultimately this is an ethical and social judgment and not a medical determination.

Scholars and jurists have expended great effort over the years to achieve a standard reflecting both society's need for criminal accountability and the converse demand for a rule flexible enough to cover the varieties and combinations of serious emotional and mental illness which destroy the capacity to commit a crime, in any just conception of the term.

One great developmental breakthrough occurred with the famous decision in Durham v. United States, 94 U.S.App.D.C. 228,

14. 10 Okl. at 717, 63 P. at 961.

15. Rex v. Arnold, 16 How.St.Tr. 695, 764 (1724).

16. "Psychiatry may be defined as that branch of medicine which deals with the genesis, dynamics, manifestations and treatment of such disordered and undesirable functionings of the personality as disturb either the subjective life of the individual or his relations with other persons or with society. • • • Viewed a little differently, psychiatry may be regarded as the science which deals with the psychopathological aspect of human biology. The latter considers man not only as a living organism but also as a thinking, feeling and striving one." Noyes & Kolb, Modern Clinical Psychiatry (5th Ed. 1958), 1.

17. P. Roche, The Criminal Mind (1957), 168–195, 244–274.

18. F. Allen, The Borderland of Criminal Justice (1964), 111.

19. A. Platt & B. Diamond, "The Origins of the 'Right and Wrong' Test of Criminal Responsibility and Its Subsequent Development in the United States: An Historical Survey," 54 Calif.L.Rev. 1227 (1966). In early law the "insane" were considered homologous to children.

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tly after the *Durham* rule was an-
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mulgated a draft rule on this subject. This rule represents the collective efforts of some of the leading thinkers in this field. After nine years of research and consideration, the proposed rule was stated as follows:

"(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

"(2) The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct."

A.L.I. Mod. P. Code § 4.01 (final draft) (1962).

Since then this test, or some variant of it, has met with increasing judicial acceptance, particularly in the federal courts. In a luminous opinion by Judge Kaufman, the Second Circuit adopted the test in United States v. Freeman, 357 F.2d 606 (2nd Cir. 1966). Chief Judge Haynsworth adopted it for the Fourth Circuit in United States v. Chandler, 393 F.2d 920 (4th Cir. 1968) (en banc), and the Ninth Circuit has now embraced it in Wade v. United States, 426 F.2d 64 (9th Cir. 1970) (en banc). The *M'Naghten* test has now been overthrown in all but the First Circuit.[21] These cases contain excellent disquisitions on the *M'Naghten* rule, its deficiencies, and the legal and psychiatric framework underly-

Weihofen, "The Flowering of New ...pshire," 22 U. of Chi.L.Rev. 350, ...(1955).

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ing the A.L.I. test. As Chief Judge Haynsworth said of the A.L.I. test:

> "With appropriate balance between cognition and volition, it demands an unrestricted inquiry into the whole personality of a defendant who surmounts the threshold question of doubt of his responsibility. Its verbiage is understandable by psychiatrists; it imposes no limitation upon their testimony, and yet, to a substantial extent, it avoids a diagnostic approach and leaves the jury free to make its findings in terms of a standard which society prescribes and juries may apply. [Footnotes omitted.]" United States v. Chandler, *supra*, 393 F.2d at 926.

This wide acceptance of the American Law Institute test is significant. I believe that this formulation affords a workable standard, permitting realistic expert testimony about the personality and characteristics of the defendant as a whole man, but leaving to the court and jury the ultimate legal pronouncement. It avoids many of the problems encountered under the *Durham* rule.

No verbal formulation of this standard can achieve perfection as there may always be doubt about the application of general terms to marginal situations. Yet the American Law Institute standard, in the view of many, does represent the best of current thinking on this subject. It is the standard which should be employed in Alaska.[22] I regard it unfortunate that we are not taking this step today.

II

Appellant has raised the question of where the burden of proof should be placed in these cases. In Chase v. State, *supra*, this court adopted the rule that the burden was on the defendant to establish his insanity by a preponderance of the evidence. Approximately one-half of the states follow this rule.[23] But in the rest of the states, and in the federal courts, the accused need only show some evidence of insanity. The prosecution must then prove his sanity beyond a reasonable doubt.[24]

22. The standard need not be frozen entirely within only one rigid form of words. In appropriate cases the testimony might require some amplification of the test in the instructions to the jury. Nor is this an occasion to consider the undue resort to diagnostic labels and conclusionary medical terms which plagued the court under the Durham rule and which the court sought to limit in Washington v. United States, 120 U.S.App.D.C. 20, 300 F.2d 444 (1907). Hopefully, care would be taken to see that experts explain such labels and terms in language understandable to the jury.

23. Alabama, Knight v. State, 273 Ala. 480, 142 So.2d 899 (1962); Alaska, Chase v. State, 369 P.2d 997 (Alaska 1962); Arkansas, Kelley v. State, 154 Ark. 246, 242 S.W. 572 (1922); California, People v. Monk, 56 Cal.2d 288, 14 Cal.Rptr. 633, 363 P.2d 865 (1961); Delaware, Longoria v. State, 3 Storey 311, 53 Del. 311, 168 A.2d 695 (1961); Georgia, Ross v. State, 217 Ga. 569, 124 S.E.2d 280 (1962); Iowa, State v. Drosos, 253 Iowa 1152, 114 N.W.2d 526 (1962); Kentucky, Tunget v. Commonwealth, 303 Ky. 834, 198 S.W.2d 785 (1947); Maine, State v. Park, 159 Me. 328, 193 A.2d 1 (1963); Minnesota, State v. Finn, 257 Minn. 138, 100 N.W.2d 508 (1960); Missouri, State v. King, 375 S.W.2d 34 (Mo.1964); Montana, State v. DeHann, 88 Mont. 407, 292 P. 1109 (1930); Nevada, State v. Behlter, 55 Nev. 230, 29 P.2d 1000 (1934); New Jersey, State v. Kudzinowski, 106 N.J.L. 155, 147 A. 453 (1929); North Carolina, State v. Swink, 229 N.C. 123, 47 S.E.2d 852 (1948); Ohio, State v. Stewart, 176 Ohio St. 150, 198 N.E.2d 439 (1964); Oregon, 14 Or.Rev.Stat. 136.390 (1960); Pennsylvania, Commonwealth v. Updegrove, 413 Pa. 599, 198 A.2d 534 (1964); Rhode Island, State v. Gaunlles, 161 A.2d 818 (R.I.1960); South Carolina, State v. Tidwell, 100 S.C. 248, 84 S.E. 778 (1915); Texas, Wenck v. State, 238 S.W.2d 793 (Tex.Cr.App. 1951); Virginia, Christian v. Commonwealth, 202 Va. 311, 117 S.E.2d 72 (1960); Washington, State v. Mays, 65 Wash.2d 58, 395 P.2d 758 (1965); West Virginia, State v. McCauley, 43 S.E.2d 454 (W.Va.1947). See 17 A.L.R.3d 146 (1968).

24. Those states following the federal rule are: Arizona, State v. Schantz, 98 Ariz. 200, 403 P.2d 521 (1965); Colorado, Castro v. People, 140 Colo. 403, 346 P.2d

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Those who place the burden of establishing sanity on the defendant usually argue that this accords with the presumption of sanity. Because there is a presumption, it is said that the prosecution should not be put to proving that which normally is not imposed upon it. But under the federal rule, the presumption of sanity is still employed. It is operative until some evidence is produced which adequately brings into issue the sanity of the defendant. The presumption then disappears and the mental capacity of the defendant to commit the crime becomes an essential element, to be proved beyond a reasonable doubt, like any other.[25]

It has been said that the burden of establishing insanity should be placed on the accused because sanity is not an element of the offense but a quality of the one who commits it. Chase v. State, *supra*, 369 P.2d at 1003. But this overlooks the important consideration that once sanity is in issue it is a fact to be established like any other ultimate fact essential to culpability. The United States Supreme Court made this plain in Davis v. United States, 160 U.S. 469, 16 S.Ct. 353, 40 L.Ed. 499 (1895), when it said:

> "No man should be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them, by whomsoever adduced, is sufficient to show *beyond a reasonable doubt* the existence of *every fact necessary* to constitute the crime charged." (Emphasis supplied.) 160 U.S. at 493, 16 S.Ct. at 360.

Realistically speaking, when sanity is an issue, it is not only a major element of the criminal proof, it may be the central factual issue in the case. For that matter, it may be the only issue. Logically, sanity is an essential element of a crime because *mens rea* is a necessary primary factor. If insanity exists at the time of the criminal act, *mens rea* fails, there is no jointure of act and intent, and under the traditional analysis no crime has been committed. As Mr. Justice Frankfurter noted, dissenting in Leland v. Oregon, 343 U.S. 790, 803, 72 S.Ct. 1002, 1009, 96 L.Ed. 1302 (1952):

> "Even though a person be the immediate occasion of another's death, he is not

1020 (1959); Connecticut, State v. Joseph, 96 Conn. 637, 115 A. 85 (1921); Florida, Farrell v. State, 101 So.2d 130 (Fla.1958); Hawaii, State v. Moeller, 433 P.2d 136 (Hawaii 1967); Idaho, State v. Clokey, 83 Idaho 322, 364 P.2d 150 (1961); Illinois, People v. Robinson, 22 Ill.2d 162, 174 N.E.2d 820 (1961); Indiana, Whitaker v. State, 240 Ind. 676, 168 N.E.2d 212 (1960); Kansas, State v. Penry, 189 Kan. 243, 368 P.2d 60 (1962); Maryland, Jenkins v. State, 238 Md. 451, 209 A.2d 616 (1965); Massachusetts, Commonwealth v. McHoul, 352 Mass. 544, 226 N.E.2d 556 (1967); Michigan, People v. Eggleston, 186 Mich. 510, 152 N.W. 944 (1915); Mississippi, McGarrh v. State, 249 Miss. 247, 148 So.2d 494 (1963); Nebraska, Thompson v. State, 159 Neb. 685, 68 N.W.2d 267 (1955); North Dakota, State v. Barry, 11 N.D. 428, 92 N.W. 809 (1902); New Hampshire, State v. Bartlett, 43 N.H. 224 (N.H.1861); New Mexico, State v. Roy, 40 N.M. 397, 60 P.2d 646 (1936); New York, People v. Kelly, 302 N.Y. 512, 99 N.E.2d 552 (1951); Oklahoma, Whisenhunt v. State, 279 P.2d 360 (Okl.Cr.1954); South Dakota, State v. Waugh, 80 S.D. 503, 127 N.W.2d 420 (1964); Tennessee, Jordan v. State, 124 Tenn. 81, 135 S.W. 327 (1911); Utah, State v. Green, 86 Utah 192, 40 P.2d 961 (1935); Wisconsin, State v. Esser, 16 Wis.2d 567, 115 N.W.2d 505 (1962); Wyoming, State v. Pressler, 16 Wyo. 214, 92 P. 806 (1907). The District of Columbia also follows this rule: Jones v. United States, 109 U.S.App.D.C. 111, 284 F.2d 245 (1960). See 17 A.L.R.3d 146 (1968).

25. Fitts v. United States, 284 F.2d 108 (10th Cir. 1960). There the court said: "When, however, evidence of insanity is produced, from whatever source, the presumption of sanity disappears, and the mental capacity of the accused to commit the crime becomes an essential element to be proved by competent evidence beyond a reasonable doubt." 284 F.2d at 112.
This is the general rule which is followed in approximately one-half or more of the jurisdictions of the United States.

a deodand to be forfeited like a thing in the medieval law. Behind a muscular contraction resulting in another's death there must be culpability to turn homicide into murder."

Placing the burden on the prosecution has substantial advantages. First, it accords with the presumption of innocence and the thesis that the accused need not undertake to prove anything in a criminal case.[26]

An additional advantage is that the jury is not given the confusing task of juggling two different burdens, each of which carries a different standard. This anomaly is pointed out by Professor McCormick:

"Thus it seems inconsistent to demand as to some elements of guilt, such as an act of killing, that the jury be convinced beyond a reasonable doubt, and as to others, such as duress or capacity to know right from wrong, the jury may convict though they have such doubt. Accordingly, the recent trend both in English and American decisions is to treat these so-called matters of defense as situations wherein the accused will usually have the first burden of producing evidence in order that the issue be raised and submitted to the jury, but at the close of the evidence the jury must be told that if they have a reasonable doubt of the fact on which the justification is based they must acquit." McCormick, Evidence § 321, p. 684 (1954). (Footnote omitted.)

There are also important aspects of constitutional policy to be weighed in the balance. It has been held unconstitutional to shift the burden of persuasion on the defense of alibi to the accused. Stump v. Bennett, 398 F.2d 111 (8th Cir. 1968) (en banc), and cases cited therein. This may or may not represent some future trend. But when it comes to shifting burdens, there is not much difference between proof that a defendant was physically present, and not elsewhere, at the commission of a crime, and that he was "mentally present," in the sense that he was sane.

Lastly, the experience of the federal courts, in their treatment of the burden of persuasion, is of value. The federal courts have worked under the rule of Davis v. United States, *supra*, since 1895, and have not found it a handicap in effecting criminal justice. In my view, when sanity is in issue, the burden of persuasion should be upon the prosecution to establish the sanity of the accused beyond a reasonable doubt.

III

In fairness, to avoid surprise, the prosecution should be entitled to notice that it must adduce evidence of the defendant's sanity. Because the mental status of an accused, in terms of sanity, is usually not in issue in a criminal prosecution, it would be an unfair burden to require the state invariably to guess at whether this issue might be raised at trial, and possibly to prepare on this issue, only to have it not raised at all. Nor is it fair for defendants to wait in ambush until trial to inject the sanity issue as a surprise tactic.

Therefore, if we were to alter our insanity rules, we should also change our procedural rules to require that at the time of plea, or within a certain number of days thereafter, one intending to raise the issue of insanity at his trial must specially plead that he was insane at the time he committed the act charged.

For the reasons given I would reverse and remand for a new trial.

26. As a practical matter the accused often must undertake to adduce proof of insanity if he is to prevail in creating a reasonable doubt on the whole evidence.

HB-350

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 136

Amending Criminal Rules
6 and 18

In order to carry out the provisions of Chapter 126 SLA 1971, effective September 2, 1971, and the decision of the Supreme Court of Alaska in Alvarado v. State of Alaska, Op. No. 704, July 6, 1971, within the framework of the judicial system's budget for the fiscal year 1971-1972, we hereby promulgate the following temporary order concerning venue of civil and criminal cases, and designating the sites for the convening of grand juries.

IT IS ORDERED:

A. The location where grand juries shall be convened: In order to investigate crimes in the various election districts throughout Alaska, the grand jury shall be convened at the place as set forth herein. The presiding superior court judge of the judicial district which encompasses the appropriate election district shall convene the grand jury in conformity with the applicable statutes and rules of criminal procedure.

In regard to offenses committed in the various election districts (as set forth in official 1965 reapportionment map) grand juries shall be convened at the following locations:

As to offenses committed in election districts 1, 2 or 3, the grand jury shall be convened at Ketchikan or Sitka, Alaska.

As to offenses committed in election districts 4 or 5, the grand jury shall be convened at Juneau, Alaska.

As to offenses committed in election districts 7 and 8, the grand jury shall be convened at Anchorage, Alaska.

As to offenses committed in election districts 6, 9, 10 or 11, the grand jury shall be convened at Kenai or Kodiak, Alaska.

As to offenses committed in election districts 11, 12, or 13, the grand jury shall be convened at Kodiak, Alaska.

As to offenses committed in election districts 14, 15, 17, 18 or 19, the grand jury shall be convened at Nome, Alaska.

As to offenses committed in election district 16, the grand jury shall be convened at Fairbanks, Alaska.

B. Criminal Cases, Place of Trial: The trial of all criminal cases shall take place in the election district where the crime was committed subject to the convenience of the parties and witnesses and the change of venue provisions of AS 22.10.040. The place of the trial shall be the nearest urban center within the appropriate election district of the alleged crime where there are facilities available to house the court and jury.

In order to provide the court with information concerning the appropriate facilities the presiding superior or presiding district court judge of the judicial district shall request the Administrative Director's office to investigate the availability of appropriate facilities and to report in writing. This report shall contain a specific recommendation as to the feasibility of holding trial at the place where the crime was committed, and shall also contain a recommendation as to alternate places of trial. Preference should be given to those urban centers having appropriate facilities which are located nearest the place where the crime was committed.

This report of the Administrative Director's office shall become a permanent part of the record.

C. Civil Cases, Place of Trial: The trial of all civil cases except as hereinafter provided shall take place in the judicial district where the cause of action arose or the district where the defendant was personally served with preference being given to the nearest urban center where the superior court conducts regular sessions of the superior court as set forth in Administrative Rule 29 or where the district court holds regular sessions of the district court as set forth in Administrative Rule 32.

(1) The trial of all actions in ejectment or for recovery of the possession of, quieting title to, for the partition of, or the enforcement of liens upon, real property shall commence in the judicial district in which the real propery, or any part of it affected by the action, is situated.

(2) Failure to make timely objection to improper venue waives the requirements of this rule.

(3) Nothing in this order shall be construed to affect the trial of civil cases within the jurisdiction of the magistrate court.

D. Selection of Grand and Petit Jurors: The jurors selected for service on a grand or petit jury shall have the qualifications set forth by law and shall be drawn and selected in conformity with existing statutes and rules with the following additional provisions:

(1) grand jury - jurors who serve on the grand jury shall be selected from a fifty-mile radius of the designated place of meeting of the grand jury as set forth in Part A of this order.

(2) petit jury - jurors to serve on the petit jury shall be selected from a radius of fifty miles of the urban center designated as the site of the criminal or civil trial as set forth in Parts B and C of this order.

E. This order shall supercede all other rules of the court which may be in conflict with the procedure announced herein.

DATED: August 27, 1971.

/s/ George F. Boney
Chief Justice

/s/ Jay A. Rabinowitz
Associate Justice

/s/ Roger G. Connor
Associate Justice

/s/ Robert C. Erwin
Associate Justice

LAWS OF ALASKA

1971

Source

CSSB 153 6JR.

Chapter No.

126

AN ACT

Relating to the place of trial; and changing Rule 18, Rules of Criminal Procedure.

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

* Section 1. AS 22.10.030 is amended to read:

Sec. 22.10.030. WHERE ACTIONS ARE TO BE BROUGHT. (a) All actions in ejectment or for the recovery of the possession of, quieting title to, for the partition of, or the enforcement of liens upon, real property shall be commenced in the superior court in the judicial district in which the real property, or any part of it affected by the action, is situated.

(b) If, in a civil action other than one specified in (a) of this section, a defendant can be personally served within a judicial district of the state, the action against that defendant shall be commenced in that judicial district or in the judicial district in which the claim arose.

(c) All prosecutions for crimes and offenses shall be commenced in the judicial district in which the crime or offense was committed.

(d) Subject to sec. 40 of this chapter, a trial and any precedent or antecedent hearings in an action shall be conducted in an election district within the judicial district at a location which would best serve the convenience of the parties and witnesses.

(e) Actions in cases not covered by this section may be commenced in any judicial district of the state.

(f) Failure to make timely objection to improper

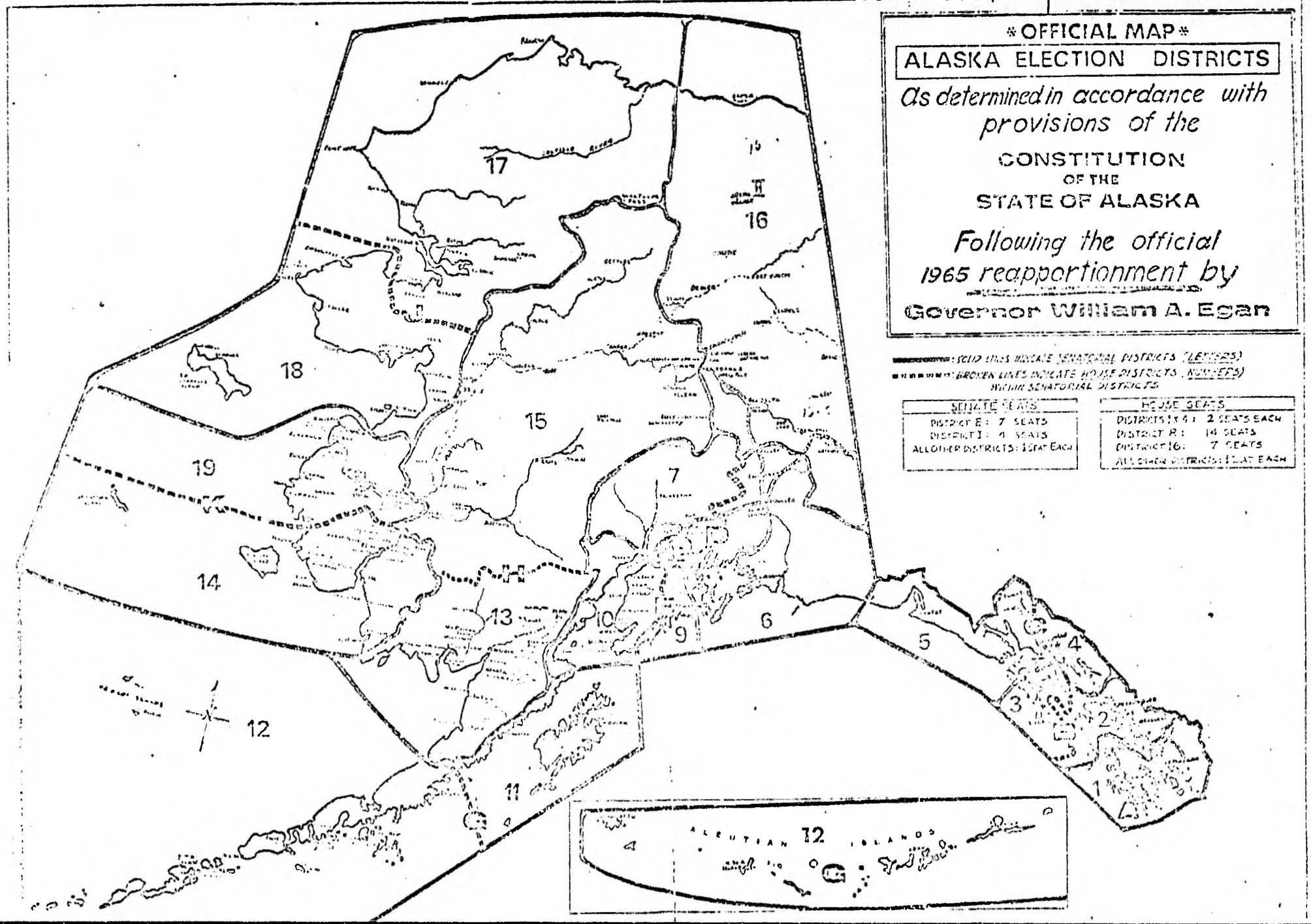
venue waives the requirements of this section.

* Sec. 2. In sec. 1 of this Act, AS 22.10.030(d) has the effect of changing Rule 18, Rules of Criminal Procedure, by requiring criminal prosecutions to be had not only in the judicial district in which the crime or offense was committed, but in the election district within that judicial district at a location convenient to the parties and witnesses.

* Sec. 3. It is the intent of this Act to make the administration of justice more accessible to the people of rural areas of the state. In conjunction with the amendments in this Act, it is the legislative intent that AS 22.10.140, providing for the temporary assignment of superior court judges anywhere in the state, be fully implemented.

Permitted to become law without signature: June 4, 1971
Actual effective date: September 2, 1971

New Map


OFFICIAL MAP
ALASKA ELECTION DISTRICTS
As determined in accordance with provisions of the
CONSTITUTION
OF THE
STATE OF ALASKA
Following the official 1965 reapportionment by
Governor William A. Egan
SOLID LINES INDICATE SENATORIAL DISTRICTS (LETTERS)
BROKEN LINES INDICATE HOUSE DISTRICTS (NUMBERS) WITHIN SENATORIAL DISTRICTS
SENATE SEATS
DISTRICT E: 7 SEATS
DISTRICT I: 4 SEATS
ALL OTHER DISTRICTS: 1 SEAT EACH
HOUSE SEATS
DISTRICTS 1 & 4: 2 SEATS EACH
DISTRICT 8: 14 SEATS
DISTRICT 16: 7 SEATS
ALL OTHER DISTRICTS: 1 SEAT EACH
17
16
18
15
19
7
14
13
10
9
6
5
4
3
2
1
12
11
ALEUTIAN ISLANDS
12

HB-350

Supreme Court

State of Alaska

February 16, 1972

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

Honorable Robert Ziegler, Sr.
Alaska State Senate
Juneau, Alaska 99801

Honorable William J. Moran
Alaska House of Representatives
Juneau, Alaska 99801

Gentlemen:

I am enclosing descriptions for the judicial districts and a map showing how they would look. These descriptions have the advantage of simplicity of location and would permit the state the economic benefits which flow from the fact that the judicial districts and transportation routes are aligned.

The court is in favor of such alignment, but wants the description clearly understandable to all. I am asking all presiding superior and district court judges to comment directly to you with a cross-copy to me.

Sincerely yours,

Robert C. Erwin
Associate Justice

RCE:kf

CC: Mr. Herb Soll
Honorable John H. Dimond
Honorable George F. Boney
Honorable Jay A. Rabinowitz
Honorable Roger G. Connor
Honoragle Robert Boochever
Honorable Thomas B. Stewart
Honorable William H. Sanders
Honorable James M. Fitzgerald
Honorable Warren Wm. Taylor
Honorable Bruce Monroe
Honorable Maurice Kelliher
Honorable Paul B. Jones
Honorable Hugh H. Connelly

FIRST JUDICIAL DISTRICT

The First Judicial District shall include that portion of Alaska east of the official boundary between Alaska and Canada running on a line from the Arctic Ocean to the Gulf of Alaska.

SECOND JUDICIAL DISTRICT

The Second Judicial District shall include that portion of Alaska enclosed by starting from a point commencing at 70° N. Latitude and 164° W. Longitude; thence east along 70° N. Latitude to 70° North Latitude and 156° W. Longitude; thence south along 156° W. Longitude to that point where it meets the Arctic Circle; thence west along the Arctic Circle to 160° W. Longitude; thence south along 160° W. Longitude to 63° N. Latitude; thence west along 63° to the Bering Sea, to include all islands of Alaska offshore from such land mass.

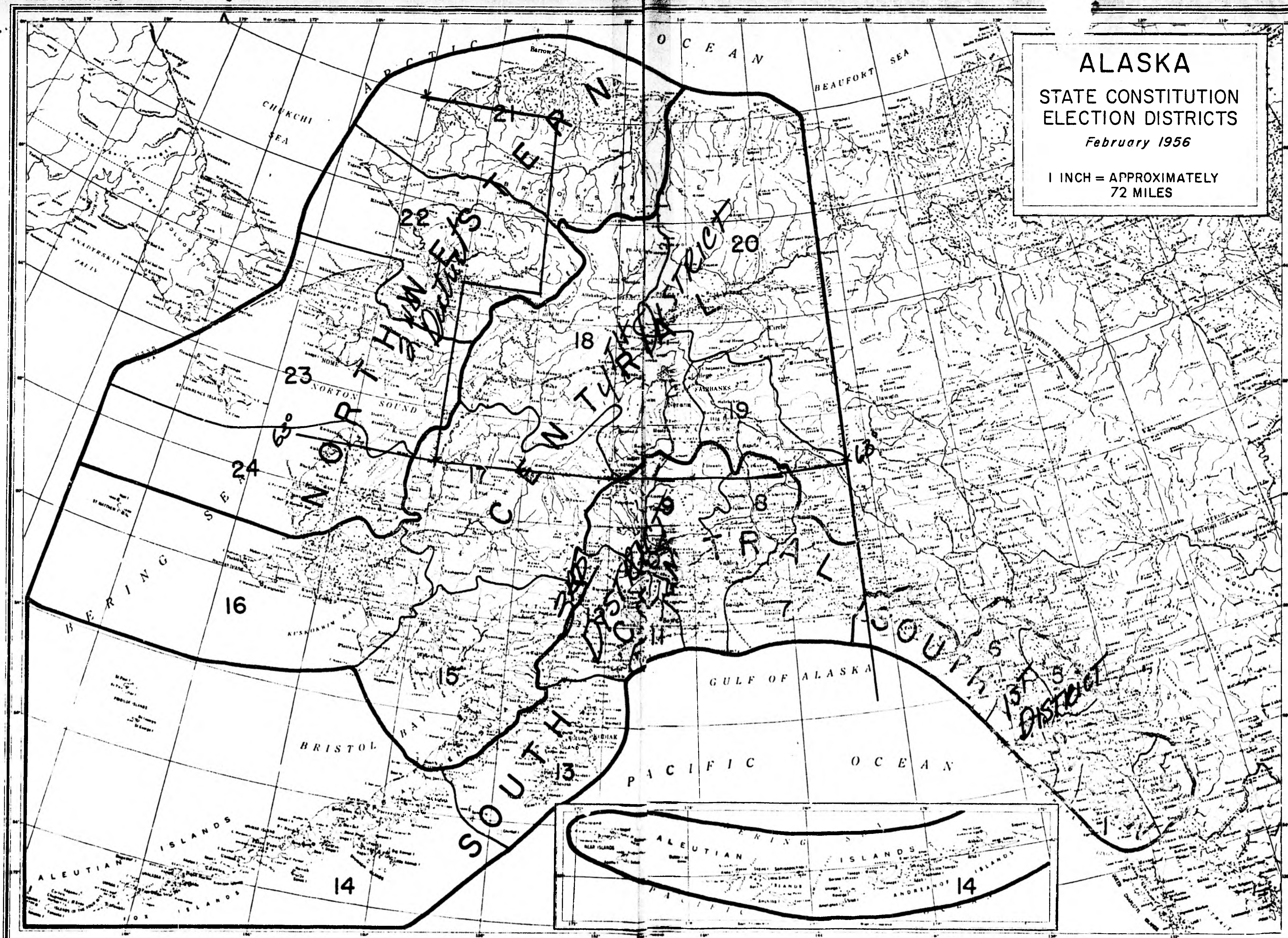
THIRD JUDICIAL DISTRICT

The Third Judicial District shall include that portion of Alaska south of 63° N. Latitude, except for the area set forth in the First Judicial District.

FOURTH JUDICIAL DISTRICT

The Fourth Judicial District shall include that portion of Alaska north of 63° N. Latitude except for the area set forth in the Second Judicial District.

ALASKA MAP A



ALASKA
STATE CONSTITUTION
ELECTION DISTRICTS
February 1956
1 INCH = APPROXIMATELY 72 MILES
ARCTIC OCEAN
BEAUFORT SEA
CHUKCHI SEA
NORTON SOUND
BERING SEA
BRISTOL BAY
GULF OF ALASKA
PACIFIC OCEAN
ALEUTIAN ISLANDS
Barrow
NOME
FAIRBANKS
KODIAK
NORTHWEST DISTRICT
CENTRAL DISTRICT
SOUTH CENTRAL
SOUTHEAST DISTRICT
1
5
7
8
9
11
13
14
15
16
17
18
19
20
21
22
23
24

HB-350

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

January 17, 1972

M E M O R A N D U M

TO : Rep. William J. Moran, Chairman
House Judiciary Committee

FROM : Arthur H. Peterson, Revisor of Statutes

SUBJECT: Reapportionment and redistricting

This is a brief reply to your question, "What can the legislature do about reapportionment and redistricting?" It is based on a quick review of our constitution and statutes but not on extensive research into the case law and analytical commentary of authorities.

As you know, the Alaska Constitution's art. VI deals with this subject (referring to the districts set out in art. XIV) and does not specify a legislative role; nor do the statutes specify a role for the legislature in the redistricting process. Three types of action appear open: (1) amend the statutes, (2) amend the constitution, (3) seek judicial redress. In the comments below, distinction is to be made between action which could be taken with regard to the recent redistricting proclamation of the governor and that which could be taken in anticipat on of the next decennial redistricting.

(1) AS 15 could be amended by adding guidelines for the reapportionment board's activities and recommendations, supplementing basic requirements stated in art. VI, sec. 6 of the Alaska Constitution and by the courts. If there is concern about the recent proclamation's early termination of some Senate terms, a statute prohibiting that would probably be constitutional and appropriate. Legislative control of the budget is, of course, one means of affecting the composition of the reapportionment board. One thing that could not be done is the enactment of a (valid) statute nullifying the recent proclamation; if the proclamation was issued in accordance with the constitution, such a statute would be invalid.

(2) The two statutory possibilities mentioned above could be used in the constitution instead. In addition, the constitution could state differently or more specifically

the composition of the reapportionment board (such as by requiring bipartisan or multi-partisan representation on the board). Or an amendment could change the method of selection of the board, perhaps to require legislative confirmation or legislative naming of certain members or the naming of some members by a person or body other than either the governor or the legislature such as the chief justice or the central committee of each major political party. Or the reapportionment board could be given more than a mere advisory role, which would strengthen the legislative voice if the method of selecting board members is changed. And art. VI could and should be substantially amended to reflect court decisions handed down since our constitution became effective; i.e., the periodic redistricting of the Senate districts should be specified, with appropriate tailoring of various provisions in that article. In making any changes in the constitution, the legislature would, of course, want to avoid assuming too dominant a role because of the inherent conflict of interests involved.

(3) It would seem that the only way to change the recent proclamation would be through court action. Art. VI, sec. 11 of the Alaska Constitution provides for legal action in the superior court "to compel the governor, by mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment." This approach is available to "any qualified voter." Possible grounds for such an action would be the composition of the reapportionment board, the particular districts established (if they are felt to be in violation of judicial decisions or the standards set out in the Alaska Constitution), the early termination of some Senate terms (there being some question as to whether the governor can legally terminate constitutionally established terms), the failure to treat all Senate terms alike (with regard to early termination) and all present multi-member districts alike (there being some question as to whether the equal protection guarantees of the Alaska and United States Constitutions have been satisfied). Needless to say, this brief statement of possible grounds for questioning the proclamation should not be interpreted as an assurance of the success of the court action. A challenge on the sole ground of the board's composition at this late date seems likely to fail through application of the doctrine of laches or the art. VI, sec. 11 time limits. At any rate an action to "compel correction of any error in redistricting or reapportionment" must be brought within 30 days following the proclamation, i.e., by January 29 (or rather January 28, since the 29th is a Saturday).

AHP:hg

PLEASE NOTE

THE ORGINAL FILE CONTAINS AN OVERSIZED DOCUMENT THAT IS UNSUITABLE FOR FILMING. PLEASE REFER TO THE ALASKA STATE ARCHIVES TO VIEW THE ORIGINAL.

HB-350

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. ___

ESTABLISHING RECORDING DISTRICTS

FOR THE STATE OF ALASKA

Effective Date: _____

PREFACE

(1) Under the provisions of AS 22.05.160 -

> The supreme court is empowered to establish, modify or discontinue recording districts or precincts; to prescribe the records to be maintained and the instruments to be recorded and the accounting for recording fees; to engage and compensate recorders, deputy recorders and clerks, to require district judges to act as recorders where, and to the extent, necessary; to prescribe recording fees and to do all things necessary to maintain the recording system established under the laws of this state.

(2) Pursuant to the above statutory authority, the supreme court established recording districts and places of recording within each district by Order No. 12, dated April 25, 1960. That order was revised on December 1, 1964, and later was amended on June 16, 1967, August 15, 1967, October 16, 1969, and September 11, 1970.

(3) Order No. 12, as revised and amended, contains the geographical descriptions of each recording district. In addition, the supreme court adopted as the official maps describing the boundaries of each recording district the maps in a set entitled: "Alaska Recording District Portfolio, Dated September 1, 1964", as prepared by Tryck, Nyman & Hayes, Consulting Engineers,

Anchorage, Alaska. This set of maps consisting of approximately 153 sheets is available for inspection in the office of each recorder.

(4) Order No. 12, as revised and amended, establishes 36 separate recording districts in Alaska. This Order No. ___ reduces that number to three recording districts for the entire state, with one place of recording and filing in each of the three districts.

(5) This action has been taken, giving consideration -

(a) to the necessity of securing better means and facilities to preserve documents and instruments permitted or required by law to be recorded or filed, from damage, loss, deterioration, or destruction by reason of time, fire and other elements, and other factors;

(b) to the existence of modern technological facilities for microfilming instruments or documents, with provision for immediate retrieval so that copies can be obtained quickly and at modest cost;

(c) to the existence of modern means of transportation and communication;

(d) to the reduction in cost to the public that will result from this action.

(6) Attached to this order is a map of Alaska showing the boundaries of the recording districts established by this order.

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. ___

IT IS ORDERED:

(1) There are established in the state of Alaska 3 recording districts, with places of recording, as follows:

(a) Juneau Recording District.

The Juneau Recording District shall include that portion of Alaska south of the line of 60 degrees north latitude, and west of the meridian of 128 degrees west longitude to the meridian of 140 degrees west longitude.

Place of Recording: Juneau, Alaska.

(b) Anchorage Recording District.

The Anchorage Recording District shall include that portion of Alaska south of the line of 64 degrees north latitude, and west of the meridian of 140 degrees west longitude, and east of the meridian of 172 degrees east longitude.

Place of Recording: Anchorage, Alaska.

(c) Fairbanks Recording District.

The Fairbanks Recording District shall include that portion of Alaska north of the line of 64 degrees north latitude, and west of the meridian of 140 degrees west longitude.

Place of Recording: Fairbanks, Alaska.

(2) All districts adjacent to tidal waters shall extend three nautical miles seaward of mean lower, low water or headlands.

(3) The filing and recording of all documents or instruments required or permitted by law to be filed or recorded within a particular recording district shall be filed or recorded by recorders designated by the supreme court for each recording district. Such filing and recording shall be done in accordance with law, and with instructions of this court or the Administrative Director of Courts.

(4) If there is reasonable uncertainty because of a boundary line separating recording districts whether a filing or recording should take place in one district or another, such filing or recording may be made in more than one recording district.

(5) The degrees and lines of longitude and latitude referred to in this order are as shown on the attached map of Alaska, entitled "Alaska Recording Districts - Boundaries". Copies of the larger editions of this map, which show more detail, may be obtained at a cost of $_____ each from the following places:

(Here name appropriate places, such as the Administrative Director of Courts, the Clerk of the Supreme Court, the offices of the recorders, clerks of other courts, etc.)

(6) This order shall be effective on _____, and shall govern all filings and recordings commencing on that date.

(7) The recording districts established by Supreme Court Order No. 12, as revised and amended, are abolished on the effective date of this order. All records, files and books relating to such original recording districts shall be transferred to the appropriate recording districts established by this order, in accordance with instructions from the Administrative Director of Courts. The effectiveness of filings and recordings made in accordance with Order No. 12 as revised and amended, prior to the effective date of this order, shall not be affected by this order.

EFFECTIVE DATE: _____

_____
Chief Justice

_____
Associate Justice

_____
Associate Justice

_____
Associate Justice

_____
Associate Justice

DISTRIBUTION:

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Dept/Pub Safety (1)
Div Mines & Mins (10)
Univ/Alaska-Mines (10)
All Title Cos (5)

(b) No salary warrant may be issued to a justice of the supreme court until he has filed with the state officer designated to issue salary warrants an affidavit that no matter referred to the justice for opinion or decision has been uncompleted or undecided by him for a period of more than six months. (§ 14 ch 50 SLA 1959; am § 4 ch 115 SLA 1965; am § 2 ch 83 SLA 1967; am § 1 ch 101 SLA 1969; am § 1 ch 193 SLA 1970)

Effect of amendments. — The 1965 amendment increased the compensation of the chief justice from $23,500 to $25,500 and of each associate justice from $22,500 to $24,500 in the first sentence of subsection (a).

The 1967 amendment, effective July 1, 1967, substituted "$27,000" for "$25,500" and "$26,000" for "$24,500" in the first sentence of subsection (a).

The 1969 amendment, effective July 16, 1969, substituted "$30,000" for "$27,000" and "$28,000" for "$26,000" in the first sentence of subsection (a).

The 1970 amendment, effective July 16, 1970, rewrote the first sentence in subsection (a).

Legislative committee report. — For report on ch. 83, SLA 1967 (HB 141), see 1967 House Journal, pp. 339-340.

Am. Jur. and C.J.S. references. — 30A Am. Jur., Judges, §§ 25 to 30.

48 C.J.S. Judges §§ 34 to 39.

Sec. 22.05.150. Administrative director. The chief justice of the supreme court shall, with the approval of the supreme court, appoint an administrative director to serve at the pleasure of the supreme court and to supervise the administrative operations of the judicial system. (§ 15 ch 50 SLA 1959; am § 31 ch 32 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "supreme court" for "chief justice" following "at the pleasure of the."

Legislative committee report. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

Sec. 22.05.160. Recording districts. The supreme court is empowered to establish, modify or discontinue recording districts or precincts; to prescribe the records to be maintained and the instruments to be recorded and the accounting for recording fees; to engage and compensate recorders, deputy recorders and clerks, to require district judges to act as recorders where, and to the extent, necessary; to prescribe recording fees and to do all things necessary to maintain the recording system established under the laws of this state. (§ 26(3) ch 181 SLA 1959; am § 3 ch 24 SLA 1966)

Effect of amendment. — The 1966 amendment substituted "district judges" for "magistrates."

Chapter 10. The Superior Court.

Sec. 22.10.010. Establishment of superior court. There shall be one superior court for the state. The court shall consist of four districts bounded as follows:

First District: the area within election districts numbered one to six both inclusive, as said districts are described in art. XIV of the state constitution on March 19, 1959;

Second District: the area within election districts numbered 21 to 24, both inclusive, as said districts are described in art. XIV of the state constitution on March 19, 1959;

Third District: the area within election districts numbered seven to 15, both inclusive, as said districts are described in art. XIV of the state constitution on March 19, 1959; and

Fourth District: the area within election districts numbered 16 to 20, both inclusive, as said districts are described in art. XIV of the state constitution on March 19, 1959. (§ 16 ch 50 SLA 1959)

Am. Jur. and C.J.S. references. — 14 Am. Jur., Courts, § 1 et seq. 21 C.J.S. Courts §§ 136, 137, 147 to 163; 48 C.J.S. Judges §§ 12 to 28.

Sec. 22.10.020. Jurisdiction. (a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including but not limited to probate and guardianship of minors and incompetents. The jurisdiction of the superior court extends over the whole of the state. The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition, habeas corpus and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court. The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. Appeals are a matter of right, but no appeal from a subordinate court may be taken by the defendant in a criminal case after a plea of guilty, except on the ground that the sentence was excessive, as further provided by this section. No appeal may be taken by the state, except to test the sufficiency of an indictment or information. An appeal to the superior court may be taken on the ground that a sentence of imprisonment of 180 days or more was excessive and the superior court in the exercise of this jurisdiction has the power to modify the sentence appealed from upward or downward. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

(b) In case of an actual controversy within the state, the superior court, upon the filing of an appropriate pleading, may declare the rights

Rep. Moran

HB-350

February 9, 1972

M E M O R A N D U M

TO: Chief Justice Boney
Justice Rabinowitz
Justice Connor
Justice Erwin
Justice Boochever

INFO: Robert N. Reeves, Administrative Director
Josephine M. McPhetres, Clerk

FROM: Justice Dimond (Retired)

SUBJECT: Recording Districts

(1) I presume that the recording districts established by Supreme Court Order No. 12 originated from the old recording districts of territorial days established under the authority of section 18-1-1, ACLA 1949.

(2) The territorial recording districts were geared to judicial divisions, and after statehood, to judicial districts. Thus, each judicial district had within its boundaries a number of complete recording districts.

But later changes evolved. The Noatak-Kobuk Recording District, with place of recording at Kotzebue, which is within the Second Judicial District, was consolidated with the Fairbanks Recording District in the Fourth Judicial District. And later the Wade-Hampton Recording District, also located in the Second Judicial District, was consolidated with the Bethel Recording District, which is in the Fourth Judicial District.

(3) Under state law there is no necessary relationship between the location of a judicial district and a recording district. In 1959 four judicial districts were established, and they were described in accordance with the 24 election districts established by article XIV of the state constitution. See AS 22.10.010. For your information I enclose a map of the election districts as they existed at the time of statehood, and from this and AS 22.10.010 you can find the boundaries of the existing judicial districts. This, however, is subject to change

by the legislature. For example, the Governor has had introduced this year Senate Bill No. 295 which would change to some extent the boundaries of the judicial districts. A copy of that bill is enclosed.

The power to establish recording districts is contained in a different section of the law, i.e., AS 22.05.160. This statute, which confers upon the supreme court the power to establish recording districts, says nothing as to the necessity of those districts being related to judicial districts. For that matter, I suppose, the entire state could be made one recording district.

(4) Also, there is no necessary relationship between election districts and recording districts. By the power of reapportionment, the Governor can change the size and area of election districts under article VI, section 6 of the constitution. There is nothing in the constitution relating to recording districts, and as I have noted, the legislature, by AS 22.05.160, has given the authority to the supreme court to establish recording districts.

(5) There are presently 36 recording districts in Alaska. I believe that the public convenience and necessity would be better served by a much lesser number. This may not have been true in the early territorial days before the advent of modern means of communication and transportation. But with technological progress, such as efficient and speedy air travel, computers, and microfilm, it seems to me that the time has come to greatly reduce the number of recording districts.

(6) I believe there is ample justification for this action at this time, or in the near future. The multitude of documents that are required by law to be filed or recorded in designated recording districts are not, in many occasions, secure. (A brief description of many of the documents required to be filed or recorded is contained in the Magistrates' Handbook at pages 280-290.) These documents are subject to damage or loss by fire or other elements, or simply by reason of fading by the passage of time, or by inadequate storage facilities, or by the inefficient keeping of the records by magistrate-recorders. To remedy this in each recording district by the construction of proper, fireproof facilities, and the installation of microfilm facilities or other efficient copying equipment, would involve a prohibitive cost, which would not bear any reasonable relation to the convenience of the public. Furthermore, in some areas it may be impossible to find magistrates to act as recorders who will be able to perform all of the recording functions efficiently and effectively.

(7) I believe this situation can be remedied by establishing three large recording districts with a place of recording for each district in a city which will allow for the installation of adequate, modern facilities, such as microfilm equipment, fireproof storage, training new personnel, etc. In order to give you my present thoughts on this matter, I have prepared the enclosed form of order, where I suggest three recording districts, with places of recording, and of filing, at Juneau, Anchorage and Fairbanks. (As to the necessity of filing instruments, as distinguished from recording them, see the Uniform Commercial Code, AS 45.05.768.)

(8) I thought that perhaps the most simple method of describing the boundaries of these districts would be by degrees of meridians and lines of degrees of latitude, which will appear on any official map of Alaska. This does away with the very complex geographical descriptions contained in Order No. 12, and the 153 maps of existing recording districts in the official recording district portfolio, dated September 1, 1964, as prepared by Tryck, Nyman & Hayes, Consulting Engineers, of Anchorage. These maps, by the way, are cumbersome because of their bulk, and because segments of certain recording districts are contained on a number of different sheets which are not filed in sequence. I think by using the degrees and lines of longitude and latitude, geographical descriptions would be unnecessary.

(9) The areas I have suggested are, of course, tentative. They can be modified, using the same system. For example, the degrees of longitude (or meridians) on the existing official recording district map go by "fours". I presume the degrees in between could be scaled by a cartographer or engineer and placed on a map of Alaska to show the boundaries of the recording districts. Also, there may be alternative methods of describing the boundaries without getting into complex geographical descriptions such as in Order No. 12. Possibly boundaries could be described by lines on the map going from one city or village or obvious landmark to another.

(10) Whatever method is adopted, I would suggest that you enlist the assistance of a trained cartographer or engineer before deciding on the final boundaries, in order to make certain that they are described accurately and represent what you intend to accomplish.

(11) One beneficial effect, among others, that this new arrangement would have, would be to free magistrates and district judges from time consuming recording functions so that they could devote more of their time to their primary function of performing their judicial duties of administering justice in the courts.

(12) Using the longitude-latitude concept, there are a large number of variations that can be made. For example:

(a) A recording center could be established at Nome, if thought desirable, by taking a portion of what I have suggested now be included in the Anchorage and Fairbanks districts and calling it the Nome Recording District.

(b) Similarly, a recording center could be established at Ketchikan by using an appropriate degree-line of latitude dividing Southeast Alaska into a Juneau Recording District and a Ketchikan Recording District.

(c) If it is considered advisable by the legislature, this same method of defining boundaries could be used to define the boundaries of judicial districts, instead of attempting to define those boundaries by election districts - the latter being subject to change by the Governor under the constitution. However, the considerations which might govern the legislature in creating judicial districts may not necessarily be the same as those which would influence the supreme court in creating recording districts. The latter may vary from time to time with shifts in population and air routes, highways, etc. And whether the legislature would wish to align judicial districts with certain recording districts as defined by the supreme court, is a question I cannot answer.

(13) Order No. 12 has been revised and amended so many times, I would suggest that if you choose to adopt this new approach, a new order number be used.

(14) If this suggested approach to the problem is not adopted, and Order No. 12 is retained, then it ought to be revised again (and the maps would have to be revised also) to show the consolidation of the Noatak-Kobuk district with the Fairbanks district, and the Wade-Hampton district with the Bethel district, and other changes that have been made.

(15) For your convenience, I am attaching copies of the existing recording district maps, upon which I have outlined with red ink the boundaries of the recording districts I suggest be created.

(16) If new recording districts are established, I would also suggest that the order be printed on letter size paper, with a title cover, and bound in the manner of binding briefs. Also, there probably should be included with the order, at the end, a map showing the boundaries of the recording districts.

(17) I trust that you will not feel I am intruding in any way in the function committed to the supreme court by the legislature. The reason I have done what I have is that I have been interested in this type of project for quite some time, but did not have the time until now to do anything about it. If I can be of further assistance, I shall be happy to help out in any way I can.

(18) On February 7 I had occasion to call Justice Erwin in Anchorage and I spoke to him about what I was doing. He suggested that I send copies of this memo and the attachments to Senator Ziegler and Representative Moran, which I am doing. If I can be of any assistance to either of these gentlemen and their respective committees, I shall be most happy to do whatever I can to help them. They can reach me by calling me at home: 364-3325, and I can be available at their convenience.

JHD

cc: Senator Ziegler
Representative Moran

JUDICIARY COMMITTEE
Pouch V
Juneau, Alaska 99801

January 24, 1972

The Honorable George F. Boney
Chief Justice of the Supreme
Court of Alaska
941 Fourth Avenue
Anchorage, Alaska 99501

Re: HB 350 - Creating Fifth Judicial District

Dear Mr. Chief Justice:

The above-named bill was introduced in the First Session of the Seventh State Legislature by Representatives Hohman and Moore. It would create a fifth judicial district with headquarters in Bethel. While I can understand that the administration of justice in rural Alaska might be facilitated by the enactment of HB 350, or a similar proposal, this committee has had no recommendation for such action from the Judicial Council, nor was such action recommended in your State of the Judiciary message to the Joint Session on January 20. (I noted, of course, that you did comment on the subject of "bush" justice, and made recommendations with respect to both judicial officers and facilities for rural Alaska.)

The House Judiciary Committee is also developing legislation to correct the problem created by the fact that, whereas venue was placed in the several election districts pursuant to Ch. 126, SLA 1971, the geographical limits of some of such districts have been changed pursuant to Governor Egan's Proclamation of Reapportionment and Redistricting, dated December 30, 1971. Not all such changes will make a difference for judicial purposes but the change in the former Election District Eight (Anchorage), if no other, will require legislative action at this session. (Legislation incidentally, which we hope to draw without prejudice to any judicial review of the validity of the proclamation.)

At various times during the last session, and again during this session, mention has been made of problems, administrative and otherwise, which are caused by the fact that air routes and other considerations are not always compatible with the allocation of areas to each of the Second and Fourth Judicial Districts. I understand, also, that the further division of these judicial districts into election districts, while probably serving the political purpose, do not serve equally well the judicial purpose.

The House Judiciary Committee requests that the Judicial Council give consideration to a study of:

1. The present organization of the several judicial districts with respect to the appropriateness of their boundaries; and

2. The appropriateness of the election district as the geographical consideration determining venue within a judicial district.

Section 1, Article IV, of the Alaska Constitution provides that judicial districts shall be established "by law," i.e., by action of the Legislature. If memory serves me, the State act establishing the four judicial districts followed the boundaries of the judicial divisions as they were established in earlier times by act of Congress and as they had become traditional to Alaska. The very significant changes which have since occurred mandate our reviewing the appropriateness of these districts.

Although we may anticipate that reapportionment and redistricting will only follow each decennial census, the fact is, as mentioned, that the delineation of such districts pursuant to the "one man, one vote" rule, or any other rule concerned with insuring reasonably equal representation of our citizens in the legislative process, may not only not serve the judicial purpose, but may tend to defeat that purpose. This committee requests, therefore, that you consider whether it would be more appropriate to provide another method for delineating the local areas for the purpose of establishing venue.

The committee understands that the study requested may not be completed in time for legislative action at this session of the Legislature. The urgency of dealing with the current problem of redistricting, as it affects venue, requires that action not abide the completion of this study. The committee will maintain close contact with your office in formulating the interim solution.

Sincerely yours,

William J. Moran
Chairman

WJM:mm